

Volume 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Orrick, Judge

OWEN DIAZ,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 17-06748 WHO
)	
TESLA, INC. dba TESLA MOTORS,)	
INC.)	
)	
Defendant.)	
_____)	

San Francisco, California
Monday, March 27, 2023

TRANSCRIPT OF TRIAL PROCEEDINGS

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United States District Court - Official Reporter

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Monday - March 27, 2023

8:33 a.m.

P R O C E E D I N G S

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(Pause in proceedings.)

THE CLERK: All rise. This court is now in session,
the Honorable William H. Orrick presiding.

THE COURT: Good morning, everybody. Please be
seated.

(Pause in proceedings.)

THE COURT: All right. Good morning, all. The --
there are a few things that I wanted to go over before we get
going.

Mr. Diaz, hello.

THE WITNESS: How are you doing again, sir?

THE COURT: I'm doing just fine.

The jury is gathering in the jury room. The first thing
is the dealing with the objections to Oppenheimer slides which
I'm going to overrule. The slides are consistent with her
prior testimony. She has been qualified and the demonstratives
are acceptable.

MR. SPIRO: Understood, Your Honor.

THE COURT: Let's see. I have given you revised jury
instructions for this morning. The only revision is that I
have added 13A, which comes from the Model 4.1. It's the fair
treatment of corporations instruction, and I think it's

1 appropriate to provide it. So take a look at that. And tell
2 me whether anyone has any problem with it.

3 **MR. SPIRO:** No issue from the Defense, Your Honor.

4 **MR. ORGAN:** One moment, Your Honor.

5 (Pause in proceedings.)

6 **MR. ORGAN:** No objection, Your Honor.

7 **THE COURT:** All right. So we will add that.

8 The procedure that I'm going to use for voir dire, in
9 going through the survey responses, I decided that the most --
10 the fairest way of doing it is to exclude everybody who said
11 any word at all about Tesla or Mr. Musk in their responses, and
12 when I say "exclude," I mean just stand in the hallway and then
13 we'll question them individually, but the -- that will ensure
14 that there is zero taint for -- for the pool.

15 So I'm going to do my usual voir dire questioning of
16 people who didn't register anything with respect to Mr. Musk or
17 Tesla in the surveys, and there are about 16 of them. We'll
18 ask them questions here. We'll take a break. I'll ask the
19 remaining people to stay outside, and then one at a time I'll
20 ask them to come in, and we can discuss their concerns,
21 information, beliefs with respect to Tesla and anything else
22 that is appropriate to be asked at that point.

23 Mr. Organ.

24 **MR. ORGAN:** Yes, Your Honor.

25 Just a quick question. That doesn't change their order in

1 the random list; correct?

2 **THE COURT:** Correct.

3 **MR. ORGAN:** Okay. Thank you, Your Honor.

4 **THE COURT:** Correct.

5 So does that all make sense to everybody here? Understand
6 that?

7 **MR. SPIRO:** I understand, yes, Your Honor.

8 **THE COURT:** Okay. One question I didn't ask but
9 I'm -- so I'm going to ask it now, is everybody on your team,
10 Mr. Alexander, vaccinated and boosted?

11 **MR. ALEXANDER:** Yes, Your Honor.

12 **THE COURT:** And what about you, Mr. Spiro?

13 **MR. SPIRO:** I would have to check and confer. I don't
14 know that information off the top of my head.

15 **THE COURT:** Okay. Well, that's what I would like you
16 to do. Why don't you do that now.

17 **MR. SPIRO:** Okay. I will take a moment. Thank you.

18 (Pause in proceedings.)

19 **MR. SPIRO:** Everybody present is, Your Honor.

20 **THE COURT:** Okay. Because I'm going to make a
21 representation to the jury that that's the case and you should
22 check with all of your witnesses. If they are not vaccinated,
23 they should be wearing a mask when they testify. Okay?

24 **MR. SPIRO:** Understood.

25 **MR. ORGAN:** Your Honor, I did check with Mr. Kawasaki,

1 who is the one witness who will likely testify today, he is
2 vaccinated, Your Honor.

3 **THE COURT:** Okay. Just make sure that that all
4 happens. I'm going to be interested in knowing at the end of
5 the day who the next day's witnesses are so that I can be
6 prepared, as well as everybody else.

7 **MR. ORGAN:** Yes, Your Honor.

8 And I will say that Mr. Spiro and I had a conversation --
9 were just having a conversation when Your Honor came in, and
10 apparently we need to meet and confer a little bit in terms of
11 his time estimates, which might be a little different than what
12 we had known before. So that might change in terms of some of
13 the next days out, but --

14 **THE COURT:** Okay. That's fine. Just let me know at
15 the end of the day who is going to be testifying tomorrow.

16 **MR. ORGAN:** Thank you, Your Honor.

17 **MR. SPIRO:** Yes, Your Honor, what spurred that
18 conversation, just so that the Court's is aware, is I shared a
19 concern that I appreciate that the Court is running a very
20 efficient schedule here, and we hope to, too. I think it is
21 going to be very close this week in terms of timing. I think,
22 you know, so razor close that a bathroom break could throw off
23 the timing estimates.

24 And when we had originally looked at the timing of the
25 schedule, we had understood we would be staying a bit later on

1 Monday and Friday. That may have been our error. So I do
2 think it's going to be close.

3 **THE COURT:** You are staying later on Monday and
4 Friday.

5 **MR. SPIRO:** Very well. Yeah, I think we had clocked
6 in a little bit longer. But regardless, yeah, we are aiming to
7 finish the case this week, of course, as the Court has
8 directed.

9 **THE COURT:** Oh, okay. All right. I was thinking
10 maybe your cross-examination would be more concise than
11 Mr. Organ was anticipating, but that's fine.

12 **MR. SPIRO:** I do short crosses, so I hope that
13 everybody is happy with it.

14 **THE COURT:** As -- as it comes out, you know what your
15 time -- how much time you guys have and that's -- that's what
16 you have.

17 All right. Anything -- oh, the -- the preliminary
18 instructions are essentially also going to be the final
19 instructions, I think, with the limited additional matters.
20 And we -- but we ought to have a final instruction conference,
21 and so I'm thinking we should do that on Wednesday afternoon.
22 My law and motion starts at 2:00 o'clock, and if there
23 aren't -- and I'm going to post proposed final instructions on
24 Tuesday -- at least by Tuesday, and you can tell me on
25 Wednesday morning whether we need a longer conference than --

1 than just a -- something right after trial on Wednesday.

2 **MR. SPIRO:** Understood, Your Honor.

3 **THE COURT:** So those were the issues that I wanted to
4 discuss. Mr. Alexander or Organ, who should I be asking for?

5 Ms. Nunley, who should I ask for?

6 **MR. ORGAN:** Well, I think beauty and age both go to
7 Bernard, so probably Mr. Alexander, Your Honor.

8 **THE COURT:** All right. Mr. Alexander, is there
9 anything?

10 **MR. ALEXANDER:** Nothing else, Your Honor. I think we
11 are fine.

12 **THE COURT:** Okay.

13 **MR. SPIRO:** Not at this time, Your Honor. Thank you.

14 **THE COURT:** Okay.

15 **MR. SPIRO:** If I can have a moment to confer with my
16 colleagues across the aisle for a second on one issue. If
17 you're more --

18 **THE COURT:** While I'm still here?

19 **MR. SPIRO:** It doesn't have to be while you are still
20 here.

21 **THE COURT:** Okay. So let me tell you at the moment
22 there are 39 jurors upstairs who have come. Three of them have
23 some health concerns, which we'll raise, I think, when they
24 come in; and a number have failed to appear, so let me tell you
25 who those are. At the moment Number 1, 14, 26, 33, 36, and 38.

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1 At the moment they are not here. Ms. Davis is going to tell me
2 something else.

3 **THE CLERK:** Those three have essentially called in
4 sick, so they are not present.

5 **THE COURT:** And then three others have called in sick.
6 They are Jurors Number 7, 34, and 12, so they are not here
7 either.

8 So, I will leave you to discuss what you need to discuss.
9 The jury should come down -- is there -- will the results of
10 your discussion need to be conveyed to me before the jury is
11 present?

12 **MR. SPIRO:** No, Your Honor, not necessarily. I was
13 going to suggest something that may allow everything to move
14 more efficiently. But if there is anything, I will ask the
15 court staff to alert Your Honor.

16 **THE COURT:** Okay. They know where to find me.

17 **MR. SPIRO:** Yes. Thank you, Your Honor.

18 **THE COURT:** All right. So I will see you all when the
19 jury is here.

20 (Recess taken at 8:44 a.m.)

21 (Proceedings resumed at 9:21 a.m.)

22 **THE COURT:** Please be seated for a second.

23 I understand there is a matter that you want to put on the
24 record.

25 **MR. SPIRO:** Yes, Your Honor. The Court asked if there

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1 was anything else before the jurors came in. Before we broke
2 at the last session, the Court had indicated it was inclined to
3 excuse the juror that served at approximately the one-year
4 mark. We looked into that issue about whether that would
5 create an issue if this -- to avoid having to try this case a
6 third time.

7 And we looked at -- there is a California rule on the
8 subject, we think, and the issue is that it's until discharge a
9 juror is deemed to have served. And so I just wanted to raise
10 that because I'm obviously not going to raise that in front of
11 the open panel if the Court made that decision already or not,
12 and so that was just the one issue we had left hanging from the
13 last session.

14 **THE COURT:** Okay. And can you remind me of what the
15 number of that juror was?

16 **MR. SPIRO:** Juror Number 5.

17 **THE COURT:** Okay. At some point before -- not even
18 positive --

19 (Pause in proceedings.)

20 **THE COURT:** Okay. Well, I will inquire with respect
21 to her discharge dates when we talk to her. Anything else?

22 **MR. SPIRO:** No, Your Honor.

23 **MR. COLLIER:** Might I ask if Mr. Spiro would be so
24 kind as to share the rule he was referencing?

25 **THE COURT:** Good idea.

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1 **MR. SPIRO:** Sure. It's California Rules of Court,
2 Rule 2.1002.

3 **MR. COLLIER:** Thank you.

4 **THE COURT:** All right. Ms. Davis, do you have the
5 jurors outside?

6 **THE CLERK:** Yes, I do.

7 **THE COURT:** And do you have -- is there a further jury
8 list from the jurors and jury office or no?

9 **THE CLERK:** Just the one that replaced the folks who
10 have been excused for illness.

11 (Pause in proceedings.)

12 **THE COURT:** So this is just the list?

13 **THE CLERK:** It should match what you have.

14 **THE COURT:** Before 7:00 a.m. this morning.

15 **THE CLERK:** Right. Right.

16 **THE COURT:** Okay. Yeah, I don't need that. I will
17 give this back to you.

18 **THE CLERK:** All right.

19 **THE COURT:** All right. I will be back when everybody
20 is comfortably seated.

21 (Pause in proceedings.)

22 **JURY VOIR DIRE**

23 (Proceedings were heard in the presence of the prospective
24 jury panel:)

25 **THE CLERK:** All rise. This court is now in session,

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1 the Honorable William H. Orrick presiding.

2 **THE COURT:** Good morning, everybody. Please be
3 seated.

4 (Pause in proceedings.)

5 **THE COURT:** Welcome to my courtroom. I'm
6 Judge William Orrick, and I thank you for participating in this
7 trial today. This is one of the foundations of our democracy
8 and our justice system, a jury trial.

9 And before I talk to you about that service, I want to let
10 you know about the public health rules that I'm imposing in
11 this courtroom.

12 Since your health and safety are of the utmost importance
13 to me and even though the COVID virus is at its low ebb at the
14 moment, it's still potentially dangerous and contagious. And
15 since there are a lot of people here in the courtroom in pretty
16 close quarters, I'm requiring everyone to wear a mask except
17 when speaking in open court which is why I have my mask off
18 right now.

19 You may choose to keep your mask on even when you are
20 speaking. If you haven't been vaccinated, I ask you to keep
21 your mask on at all times.

22 We've had -- it may not be obvious to you because it's so
23 warm in here -- and maybe, Ms. Davis, you can check with GSA --
24 but we have had our air circulation checked by public health
25 experts, and it meets all standards and all of the court's

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1 staff and the lawyers and their staff are vaccinated.

2 Now, let me tell you why you are here and what you're
3 going to do. Trial by jury began in England in 1215. Before
4 that, the king and his cronies could do whatever they wanted to
5 without worrying about the rule of law. But noblemen in those
6 days wanted to change that autocratic way of making decisions,
7 and so the jury system grew up.

8 First, it was just for noblemen, then male landowners, and
9 on through history until now, the right to serve on a jury is
10 every citizen's constitutional right and responsibility.

11 There's a lot to say about the importance of juries in the
12 rule of law, but I'm just going to say this: In a world where
13 the fairness of our justice system is questioned, the right to
14 a jury trial assures that cases get decided by a group of
15 people who are not appointed by a politician but selected
16 randomly from the area where the case is proceeding, and they
17 are picked not by the judge but by the lawyers, by the parties
18 to the lawsuit.

19 Our Constitution recognizes that there are some cases
20 where the stakes are just too high to leave it to one person to
21 decide, particularly a judge.

22 Each of you has the experience to judge the facts and
23 consider the perspectives of other jurors, and it's the diverse
24 experiences that you bring to the courtroom that is the best
25 protection for a fair trial.

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1 As a juror, you're going to apply the law that I give you
2 to what you have learned from the witness stand, from the
3 documents in the courtroom about this case, and you will render
4 the verdict. So what you think and how you work with others
5 will be critical in deciding this case.

6 I just want to underscore for you how important what it is
7 that you've been called to do. I know a lot of people don't
8 like jury service. You all have important things to do and --
9 in your lives. This is not convenient, and it seems like an
10 imposition.

11 It is your duty as a citizen, and it's essential if we're
12 to deliver the promise of equal justice to all.

13 So with that, Ms. Davis, if you would administer the oath,
14 and then maybe let's open the -- the door in the back of the
15 courtroom to get a little more air in here.

16 **THE CLERK:** Okay. If you can all stand, please, all
17 prospective jurors, and raise your right hand for me.

18 (Prospective jurors duly sworn.)

19 **THE CLERK:** Thank you. Be seated.

20 **THE COURT:** So let me tell you just a little bit about
21 what this -- about the case, how long it's going to take, what
22 our trial days are going to look like, and what's going to
23 happen today as we pick the jury.

24 This lawsuit was brought by Plaintiff Owen Diaz who was
25 employed by Defendant Tesla at the Tesla factory in Fremont,

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1 California from June 2015 to March 2016.

2 He brought a lawsuit against Tesla alleging violations of
3 state and federal law involving racial discrimination.

4 This case is being tried in two phases: The first phase
5 for liability has already been determined. The second for
6 damages is what you will be asked to decide.

7 This is going to be a relatively short case. I expect
8 that all of the evidence will be in and the case will be
9 presented to you for deliberation by Friday, March 31.

10 I appreciate your having filled out the questionnaires as
11 you did. This morning I'm going to take a couple of hours to
12 ask you questions about your responses and others that may bear
13 on your ability to serve as a juror in the case.

14 The lawyers will also have a much briefer amount of time
15 to ask you questions as well. I'm going to take a break every
16 hour and a half or so. If I haven't called a break, please do
17 not leave the courtroom. The -- you all need to be here
18 when -- when I ask you to be here.

19 There are a number of people that I will want to speak to
20 individually without other jurors present today because of
21 information on the survey responses, and I'm going to describe
22 how I'm going to do that in a little bit right before the first
23 break.

24 The entire process of jury selection will be done today.
25 I'm hoping that we'll proceed then to preliminary instructions,

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1 the opening arguments of counsel, and perhaps the first
2 witness.

3 We'll see how the day progresses.

4 Our trial day on Tuesday, Wednesday, and Thursday will
5 start at 8:30 a.m., and it'll run until 1:30 p.m. We'll have a
6 15-minute break around 10:00 o'clock and another one at around
7 11:45. The reason that the trial day ends at 1:30 is I have
8 other cases and other calendars that happen in the afternoon
9 that I need to attend to.

10 I found when I was a lawyer it also was helpful to have
11 the afternoon to prepare for the next day. It made things go
12 more efficiently. And I have also found since being a judge
13 that it helps jurors because you can attend to some of the rest
14 of your life that is being crowded with jury service in the
15 morning.

16 On Friday, trial will start at 8:30, and then I want you
17 to be able to stay for the remainder of the afternoon. It's my
18 hope that you will get the case on Friday and can begin your
19 deliberations then. If the deliberations are not complete and
20 you go over to next week, I'll want you to plan to come in at
21 8:30 in the morning.

22 I know that jury service asks a lot of you. So I want to
23 promise you to be efficient with your time, as efficient as I
24 can be. If I need to meet with the lawyers or they need to
25 meet -- bring me an issue that shouldn't be heard by you, we'll

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1 do that before 8:30 or after 1:30.

2 I'm going to be prompt. The lawyers are going to be
3 prompt. And I ask you all to be prompt. There are a lot of
4 people involved in making a trial happen, and it's -- it's just
5 very important that everybody cooperate, pay attention to the
6 time. It's pretty rude when you don't.

7 If anyone gets sick or has any personal emergency during
8 trial that causes you to need to be excused, please contact
9 Ms. Davis, my courtroom deputy. She'll get in touch with me.
10 Ms. Davis will provide everybody who's selected on the jury
11 with a contact sheet.

12 So now we're going to move on to jury selection itself.
13 In a moment I'm going to ask the lawyers to introduce
14 themselves and their clients. Then I'm going to have some
15 questions for you and talk a little bit about the law that
16 applies to your role as jurors, and the lawyers will have some
17 questions as well.

18 Once the questioning is over, I'll determine whether any
19 juror should be excused for hardship or cause, and then the
20 parties will make their selections. And we'll have the jury.

21 So let's start with the Plaintiff's side.

22 Mr. Alexander, would you introduce your team.

23 **MR. ALEXANDER:** Thank you, Your Honor.

24 My name is Bernard Alexander. This is Owen Diaz, and my
25 colleagues are Larry Organ, Dustin Collier, Cimone Nunley,

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1 Sabrina Grisly, and Harry Plotkin.

2 **THE COURT:** All right. Does anybody in the jury know
3 any -- either Mr. Diaz or any of the lawyers?

4 (No response.)

5 **THE COURT:** All right. Mr. Spiro?

6 **MR. SPIRO:** Good morning. My name is Alex Spiro, and
7 present with me is Stephanie Kelemen, Asher Griffin.

8 Nate, can you all -- the folks from Tesla at the end here
9 are also here, but they're not going to be sitting at counsel
10 table.

11 **THE COURT:** Okay. If you'd like to introduce them,
12 please go ahead.

13 **MR. SPIRO:** Okay. Nate Smith.

14 **THE COURT:** All right. Does anybody on the jury know
15 any of the people who were just introduced?

16 (No response.)

17 **THE COURT:** All right. Does anyone on the jury own
18 any -- or who are listed here -- that's a good reminder. If
19 you have not turned off your cell phones, please do that.

20 Does anybody own any stock in Tesla? Not mutual funds.
21 Mutual funds don't count, but if you do own stock; okay.

22 And so Juror Number 9, could you stand up and just go to
23 the microphone, please.

24 (Pause in proceedings.)

25 **THE COURT:** Good morning, how are you?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR 9:** Good. How are you?

2 **THE COURT:** Excellent. Thanks.

3 So you own actual stock in Tesla?

4 **PROSPECTIVE JUROR 9:** Yeah. I have it on Robinhood.

5 **THE COURT:** Okay. And that's -- that's what I need to
6 know. Thank you.

7 And Juror Number 10, if you wouldn't mind going over to
8 the same location.

9 (Pause in proceedings.)

10 **PROSPECTIVE JUROR 10:** Good morning, Your Honor.

11 **THE COURT:** Good morning. How are you?

12 **PROSPECTIVE JUROR 10:** Good, thank you.

13 **THE COURT:** Good. And so do you also own common stock
14 in Tesla?

15 **PROSPECTIVE JUROR 10:** Yes, I do.

16 **THE COURT:** All right. How long have you owned it?

17 **PROSPECTIVE JUROR 10:** More than two years, I think.

18 **THE COURT:** Okay. Thank you.

19 All right. I have given you only the briefest of
20 descriptions of this case. Has anybody heard about it?

21 (No response.)

22 **THE COURT:** All right. So this is a civil case, which
23 means that the jury needs to include a minimum of six people.
24 I want to have eight. I'm going to select eight jurors today
25 to ensure against jurors getting sick or having other troubles.

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1 We don't want people coming to court if you are sick, and
2 everyone who is selected will participate in the deliberations.

3 In a trial -- in the trial of this case and every case,
4 each side is entitled to have a fair, unbiased, unprejudiced
5 jury. The purpose of the questions that you're about to answer
6 is to enable me to determine whether any prospective juror
7 should be excused for cause and to enable counsel for the
8 parties to exercise their individual judgment with respect to
9 peremptory challenges. Those are challenges for which no
10 reason needs to be given.

11 It's important that you disclose any reason or fact why
12 any of you might be biased or prejudiced in any way in answer
13 to the questions you are asked.

14 It's important that you disclose any reason or fact why
15 any of you might be biased or prejudiced in any way in answer
16 to the questions you are asked.

17 I'll explain that a bit more as we go along. After I have
18 asked some questions of each of you based on the questionnaire
19 responses, I may ask some questions that call for the group to
20 give a yes or no response. If the answer is "yes," please
21 raise the card at your seat. I may follow up with you
22 immediately or I may call you up to the bench in a while.

23 If at any time you're asked a question that you think
24 calls for a personal or embarrassing response, please let me
25 know if you would prefer to answer the question privately so

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1 that the lawyers and court reporter can listen but other
2 members of the jury and audience cannot.

3 No one wants to pry into your personal affairs, but the
4 reason the question may be asked is that it may have some
5 impact on your ability to sit as a juror.

6 In this case, you will be the judge of the facts. I'll
7 instruct you on the law but deciding the facts is your job.
8 The jurors selected will be the sole judges of the facts.
9 You'll be duty-bound to follow the law as stated by me and
10 eventually to apply the law to the facts as you find them from
11 all the evidence presented to you.

12 It's your duty to treat all witnesses equally and not to
13 assume someone is -- is or is not truthful based on profession
14 or looks or anything else.

15 You can't make assumptions about credibility until you
16 hear what the person has to say, and then you can evaluate that
17 and a whole list of factors that I'll instruct you about when
18 the trial starts.

19 Everyone has the right to be treated equally and fairly.
20 You must base your view of each witness' credibility on what
21 they have to say and on the evidence in this case, not on any
22 preconceived notion that you might have.

23 The responsibility of judging the facts must be performed
24 without bias or prejudice to any party. The law doesn't permit
25 jurors to be governed by sympathy, prejudice, or public

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1 opinion.

2 Some of you as an example have expressed views positive
3 and negative about Mr. Musk. Mr. Musk is not a party or a
4 witness in this case, and whatever you think of him should have
5 no bearing on your determination in this case.

6 Similarly, what you have heard about Tesla or whether you
7 like electric cars or dislike them should have no bearing on
8 your determination in this case. Those are not the issues that
9 are being presented to you.

10 The parties will expect that you'll carefully and
11 impartially consider all the evidence, follow the law as stated
12 by me, and reach a just verdict regardless of the consequences.

13 This is a civil case. The burden of proof in a civil case
14 is different from in a criminal case. In a criminal case,
15 every essential element of an offense charged must be proven
16 beyond a reasonable doubt.

17 In a civil case, the -- a fact may be established by a
18 preponderance of the evidence. That is to say, by evidence
19 that establishes that a fact is more likely true than not true.

20 This is the difference between the required proof in a
21 civil case and that that is required in a criminal case.

22 So those are just some basic foundations to what we're
23 going to do. And now I'm going to ask some questions of some
24 of you, and I'm going to be going not completely in sequence.
25 And you'll see that some of you I will be asking questions

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1 individually at a different time.

2 But right now, I would be interested in Juror Number 4.
3 If you would step to the microphone.

4 (Pause in proceedings.)

5 **PROSPECTIVE JUROR 4:** Good morning, Your Honor.

6 **THE COURT:** Good morning. How are you?

7 **PROSPECTIVE JUROR 4:** Good. How are you?

8 **THE COURT:** I'm excellent. Thank you.

9 So tell me about your -- you're working with Safeway; is
10 that right?

11 **PROSPECTIVE JUROR 4:** Yes.

12 **THE COURT:** Tell me what you do.

13 **PROSPECTIVE JUROR 4:** Courtesy clerk and cashier.

14 **THE COURT:** And how long have you been doing that?

15 **PROSPECTIVE JUROR 4:** One year.

16 **THE COURT:** Do you enjoy it?

17 **PROSPECTIVE JUROR 4:** Yes.

18 **THE COURT:** And where's the store?

19 **PROSPECTIVE JUROR 4:** Petaluma.

20 **THE COURT:** In where?

21 **PROSPECTIVE JUROR 4:** In Petaluma.

22 **THE COURT:** And you -- someone living with you works
23 for a company called Gawfco. Tell me what that is.

24 **PROSPECTIVE JUROR 4:** That's my husband. My husband
25 works -- work for that company.

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1 **THE COURT:** And what is Gawfco?

2 **PROSPECTIVE JUROR 4:** Gawfco is a -- it's an
3 enterprises, owns gas stations.

4 **THE COURT:** I got it. Okay.

5 So is -- are you aware as you're standing here now knowing
6 not a lot about things, are you aware of any reason why you
7 couldn't serve as a fair and impartial juror?

8 **PROSPECTIVE JUROR 4:** I think because English is my
9 second language, I speak only and understand simple English,
10 not difficult one. So if I don't understand everything --

11 **THE COURT:** I mean, so --

12 **PROSPECTIVE JUROR 4** -- not great, I make the wrong
13 decision.

14 **THE COURT:** So have you understood everything that
15 I've said so far.

16 **PROSPECTIVE JUROR 4:** Yes.

17 **THE COURT:** The lawyers have that job, too. They have
18 to be clear and explain what's going on and ask questions in a
19 way that is -- is understandable. So I appreciate your
20 concern. Thank you.

21 **PROSPECTIVE JUROR 4:** Okay.

22 **THE COURT:** And now Juror Number 6, please.

23 (Pause in proceedings.)

24 **PROSPECTIVE JUROR 6:** Hello. Good morning.

25 **THE COURT:** Good morning. How are you?

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1 **PROSPECTIVE JUROR 6:** Good.

2 **THE COURT:** Good. So you work with the San Francisco
3 Unified School District?

4 **PROSPECTIVE JUROR 6:** Yes.

5 **THE COURT:** And tell me -- tell me what you do.

6 **PROSPECTIVE JUROR 6:** I am the room monitor. Just in
7 the yard, watch the kids.

8 **THE COURT:** And how -- how old are the kids that
9 you're monitoring?

10 **PROSPECTIVE JUROR 6:** Elementary. Five years and 10
11 years, yeah.

12 **THE COURT:** How long have you been doing that?

13 **PROSPECTIVE JUROR 6:** Five months.

14 **THE COURT:** Do you like it?

15 **PROSPECTIVE JUROR 6:** Yeah.

16 **THE COURT:** Most of the time I think it's fun to be
17 with young kids. It's not always fun, but most of the time.

18 (Laughter)

19 **THE COURT:** Do you agree?

20 **PROSPECTIVE JUROR 6:** Sometimes.

21 (Laughter)

22 **THE COURT:** And -- and someone living with you is a
23 house decorator.

24 **PROSPECTIVE JUROR 6:** Yeah.

25 **THE COURT:** And is that for real estate?

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1 **PROSPECTIVE JUROR 6:** Just paint the wall and then do
2 the floors, and yeah.

3 **THE COURT:** That's great.

4 And so I'll ask you that same question: Are you aware of
5 anything so far that makes you think you could not be a fair
6 and impartial juror in this case?

7 **PROSPECTIVE JUROR 6:** No.

8 **THE COURT:** Okay. Thank you.

9 Juror Number 10, please.

10 (Pause in proceedings.)

11 **PROSPECTIVE JUROR 10:** Hello, Your Honor.

12 **THE COURT:** Hello. So I will tell you that because of
13 your ownership of stock, you probably will not be able to sit
14 on this jury. I wanted to also confirm that you've got an
15 nonrefundable vacation planned?

16 **PROSPECTIVE JUROR 10:** Yes, Your Honor. As a matter
17 of fact, I received the summons in January for various reason,
18 even at time, which I can explain to you, I didn't notice that
19 this is the time. My vacation was planned last June. I mean I
20 bought my ticket June 2020 and everything is planned. This is
21 my 15 year anniversary and after 34 years, the first time, I'm
22 actually taking two weeks vacation.

23 **THE COURT:** So congratulations on your anniversary.
24 I'm just -- I'm going to excuse you right now because you would
25 not be able to serve and you've got the vacation. So you may

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1 go about your life, and thank you for coming in and doing your
2 duty.

3 **PROSPECTIVE JUROR 10:** Thanks.

4 **THE COURT:** Juror Number 11, please.

5 (Pause in proceedings.)

6 **PROSPECTIVE JUROR 11:** Good morning, Your Honor.

7 Hello.

8 **THE COURT:** Good morning. How are you?

9 **PROSPECTIVE JUROR 11:** Very good.

10 **THE COURT:** Good. And so you're working with UPS?

11 **PROSPECTIVE JUROR 11:** I am, I'm currently working
12 with UPS.

13 **THE COURT:** And what are you doing?

14 **PROSPECTIVE JUROR 11:** At the moment, customer
15 service, so I package all your packages and stuff and Amazon.

16 **THE COURT:** Thank you. And how are you enjoying
17 things so far?

18 **PROSPECTIVE JUROR 11:** I very much enjoy the change.
19 I actually worked in veterinary medicine for four years, so I
20 actually enjoy working on customer service.

21 **THE COURT:** So the customers that you were having as a
22 vet -- working in the vet's office, you didn't enjoy so much?

23 **PROSPECTIVE JUROR 11:** Not exactly. I truly enjoy
24 client service in general. I very much enjoy working inside
25 the medical field and outside the medical field.

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1 **THE COURT:** That's great.

2 And have you -- are you aware -- oh, so you have a sibling
3 who works at Tesla?

4 **PROSPECTIVE JUROR 11:** As of now, he has mentioned
5 that he does work for Tesla.

6 **THE COURT:** Okay. Have you discussed his work at
7 Tesla with him?

8 **PROSPECTIVE JUROR 11:** To be quite honest, I haven't
9 been in contact with my brother in a couple weeks, so no.

10 **THE COURT:** And is there anything about that that
11 would make you feel more strongly inclined in the favor of
12 Tesla just because he's working there?

13 **PROSPECTIVE JUROR 11:** I think for per my judgment,
14 he's an individual, I'm an individual, so both of our spaces
15 are individualistic, so by all means, no.

16 **THE COURT:** Okay. And is there anything that you're
17 aware of that makes you think you couldn't serve as a fair and
18 impartial juror?

19 **PROSPECTIVE JUROR 11:** To be quite honest, I do have a
20 little bit of anxiety. But besides that, I don't think that
21 would affect my decisions.

22 **THE COURT:** Okay. When you say that you have
23 anxiety -- and if you'd like to talk about this privately, I
24 would be happy -- we can do that. But I'm interested in just
25 getting a little more information about what you mean.

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1 **PROSPECTIVE JUROR 11:** Sure. No worries. I'm very
2 open on this. I do have a leaky urinary track, so that does
3 kind of contribute to that, but I hope that doesn't affect any
4 of the service here.

5 **THE COURT:** Okay. So here we will be -- I'll be
6 taking a break every hour and a half. If you had something
7 that you needed to attend to during -- in the middle of
8 something, if you raised your hand, we could -- we would deal
9 with that issue.

10 **PROSPECTIVE JUROR 11:** I appreciate you. Thank you.

11 **THE COURT:** Okay. And is there any other reason why
12 you think you couldn't be a fair and impartial juror?

13 **PROSPECTIVE JUROR 11:** Besides what I had just
14 mentioned, no.

15 **THE COURT:** Okay. Great. Thank you very much.
16 Juror Number 13.

17 (Pause in proceedings.)

18 **PROSPECTIVE JUROR 13:** Good morning, Your Honor.

19 **THE COURT:** Good morning. How are you?

20 **PROSPECTIVE JUROR 13:** Good.

21 **THE COURT:** Good. So tell me -- you indicated that
22 you're a safety professional. Tell me what that means.

23 **PROSPECTIVE JUROR 13:** I work for a major utility
24 company such as PG&E, Virginia Dominion Power, Recurrent
25 Energy, and we build solar power plants, convection power

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1 turbine plants, billions of dollars of worth, and I kept the
2 people from getting hurt and dying.

3 **THE COURT:** Thank you very much for that. How long
4 have you been doing that?

5 **PROSPECTIVE JUROR 13:** Twenty years.

6 **THE COURT:** That's fabulous. And do you enjoy that
7 work?

8 **PROSPECTIVE JUROR 13:** It's excellent work.

9 **THE COURT:** That's terrific.

10 I'll ask you that same question: Is there any reason that
11 you are aware of at this point that you couldn't serve as a
12 fair and impartial juror?

13 **PROSPECTIVE JUROR 13:** No, sir.

14 **THE COURT:** All right. Thank you.

15 Juror Number 16, please.

16 (Pause in proceedings.)

17 **PROSPECTIVE JUROR 16:** Good morning, Your Honor. How
18 are you doing?

19 **THE COURT:** I am very well. How are you?

20 **PROSPECTIVE JUROR 16:** Good.

21 **THE COURT:** Good. And so you're retired now. How do
22 you enjoy that?

23 **PROSPECTIVE JUROR 16:** Excuse me?

24 **THE COURT:** How do you like being retired?

25 **PROSPECTIVE JUROR 16:** I have my garden, so I enjoy

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1 that.

2 **THE COURT:** And tell me how you're spending most of
3 your time.

4 **PROSPECTIVE JUROR 16:** Well, it's been -- the winter
5 was kind of hard because it was so rainy, I cannot go really
6 work on the garden. But if it's a nice day, it's a great thing
7 to do.

8 **THE COURT:** That's great. I'm always interested as
9 how people -- as I get older, I'm interested in how people are
10 spending their retirement.

11 (Laughter)

12 **PROSPECTIVE JUROR 16:** It's good to have a hobby.

13 **THE COURT:** It is. And what were you doing just
14 before you retired?

15 **PROSPECTIVE JUROR 16:** I was selling furniture at
16 Macy's at the Concord store.

17 **THE COURT:** And did you enjoy that?

18 **PROSPECTIVE JUROR 16:** Yeah. Yes.

19 **THE COURT:** Let me just see.

20 (Pause in proceedings.)

21 **THE COURT:** Are you aware of any reason why you
22 couldn't serve as a fair and impartial juror in this case?

23 **PROSPECTIVE JUROR 16:** Well, it was kind of scary
24 because of the COVID. I went through that this year, beginning
25 of the year, and it was kind of hard. And because I'm planning

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1 to visit my kids in Europe, my son will be turning 50, I would
2 like to really celebrate his birthday, and I don't want to get
3 the COVID again, of course, so...

4 **THE COURT:** I certainly -- I don't blame you at all.

5 I think probably a lot of us have gone through that and
6 are not interested in doing that. And that's one of the
7 reasons why even though we are in a place where the infection
8 rate is so low, it's why I'm still requiring people in the
9 courtroom to wear masks and --

10 **PROSPECTIVE JUROR 16:** I appreciate that.

11 **THE COURT:** And so does -- did what I say at the
12 beginning about our public health protocols, did that -- does
13 that make you feel comfortable that you'd be able to serve as a
14 juror?

15 **PROSPECTIVE JUROR 16:** Yeah, feel better if everybody
16 wearing the mask, definitely.

17 **THE COURT:** Yeah, and they will be.

18 **PROSPECTIVE JUROR 16:** Okay.

19 **THE COURT:** Great. Thank you.

20 **PROSPECTIVE JUROR 16:** Thank you.

21 **THE COURT:** Juror Number 18, please.

22 (Pause in proceedings.)

23 **PROSPECTIVE JUROR 18?** Good morning, Your Honor.

24 **THE COURT:** Good morning. How are you?

25 **PROSPECTIVE JUROR 18:** Good. How are you doing?

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1 **THE COURT:** Excellent. So, tell me -- tell me what
2 you do as a civil engineer.

3 **PROSPECTIVE JUROR 18:** Well, I work for a firm in
4 Novato. We do a variety of land development projects, a lot of
5 like parking lots, kind of like people's home's drainage
6 improvements, stuff like that.

7 **THE COURT:** And how long have you been doing that?

8 **PROSPECTIVE JUROR 18:** Just a little over two years.

9 **THE COURT:** And what kind of a background did you have
10 in order to become a civil engineer?

11 **PROSPECTIVE JUROR 18:** I went to Cal Poly in San Luis
12 Obispo and studied civil engineering for four years.

13 **THE COURT:** Great.

14 This case is a case that involved discrimination. You
15 indicate that you had witnessed discrimination in the past.
16 Will you be able to view the evidence here as it comes in in a
17 totally fair way, unbiased way, and make a determination based
18 on what you hear here on what the -- in this case the amount of
19 damages should be that are awarded to Mr. Diaz?

20 **PROSPECTIVE JUROR 18:** Yeah. I can certainly do the
21 best that I can.

22 **THE COURT:** Okay. And do you have any question in
23 your mind that you'll be able to do that?

24 **PROSPECTIVE JUROR 18:** No.

25 **THE COURT:** Okay. And is there any reason you think

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1 you couldn't serve as a fair and impartial juror?

2 **PROSPECTIVE JUROR 18:** No, there is not. I will
3 mention that I do own a little bit of Tesla stock. I probably
4 should have said that before. It's about like one share.

5 (Laughter)

6 **THE COURT:** So do you -- do you know that you own that
7 one share of stock?

8 **PROSPECTIVE JUROR 18:** Yes, I do know. I'm pretty
9 sure.

10 (Laughter)

11 **THE COURT:** Okay. So there are mutual funds that own
12 a whole variety of stocks including -- and they may or may not
13 include Tesla, and those don't count for the question that I'm
14 asking.

15 I'm asking as an individual, do you know whether you own
16 a -- a -- a share or more of stock in Tesla?

17 **PROSPECTIVE JUROR 18:** Yeah, my apologies. I do own
18 one share, yeah, that's correct.

19 **THE COURT:** Okay. When did you get it?

20 **PROSPECTIVE JUROR 18:** Probably like a little over a
21 year ago.

22 **THE COURT:** Was it a gift, or how did it come to you?

23 **PROSPECTIVE JUROR 18:** No. It's, like, after I
24 started working, I, like, saved up a little bit of money, and I
25 figured I might look to investing a little bit, so yeah.

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1 **THE COURT:** Okay. All right. Thank you.

2 Juror Number 20, please.

3 (Pause in proceedings.)

4 **PROSPECTIVE JUROR 20:** Good morning, Your Honor.

5 **THE COURT:** Good morning. How are you?

6 **PROSPECTIVE JUROR 20:** I'm good. How are you?

7 **THE COURT:** Great. And so you are a cyber security
8 engineer?

9 **PROSPECTIVE JUROR 20:** Yeah, that's right.

10 **THE COURT:** You know, when I started practicing and I
11 was asking questions of jurors, almost nobody was an engineer
12 of any sort and now almost everybody is an engineer of some
13 sort. It's great. So tell me -- tell me what you do as a
14 cyber security engineer.

15 **PROSPECTIVE JUROR 20:** So I work for a company -- so
16 my duties are like to protect the customer data. So we are
17 working towards that, like, we have a team, so we do that
18 teaming. Just trying to see, like, we have to protect the data
19 from the bad guys, so that's the main course.

20 **THE COURT:** And how long have you been doing that?

21 **PROSPECTIVE JUROR 20:** Like ten years now.

22 **THE COURT:** And you are working at Autodesk. Do you
23 enjoy working there?

24 **PROSPECTIVE JUROR 20:** Yeah, I love it. I just had
25 ten-year anniversary last month.

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1 **THE COURT:** That's great. Congratulations.

2 So, are you aware of any reason why you couldn't serve as
3 a fair and impartial juror in this case?

4 **PROSPECTIVE JUROR 20:** Not to my knowledge.

5 **THE COURT:** Great. Thank you.

6 Juror Number 22, please.

7 (Pause in proceedings.)

8 **PROSPECTIVE JUROR 22:** Good morning.

9 **THE COURT:** Good morning. How are you?

10 **PROSPECTIVE JUROR 22:** Well.

11 **THE COURT:** So, I have been looking forward to asking
12 you a question, and that is I see that you work for the San
13 Francisco Seals; is that right?

14 **PROSPECTIVE JUROR 22:** Yes.

15 **THE COURT:** And the San Francisco Seals that I knew as
16 a kid was a minor league baseball team that used to play out at
17 Seal Stadium.

18 **PROSPECTIVE JUROR 22:** That's right.

19 **THE COURT:** But I'm pretty sure that you don't work
20 for them anymore?

21 **PROSPECTIVE JUROR 22:** No.

22 **THE COURT:** So tell me about San Francisco Seals.

23 **PROSPECTIVE JUROR 22:** The San Francisco Seals is a
24 youth soccer program, and my father-in-law was -- grew up in
25 Santa Barbara, and he was a baseball player. He went to UCSB,

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1 and I think he had a little stint for like some division in
2 the -- for the Dodgers or whatever.

3 But then he came to San Francisco to study medicine, and
4 he had young children, and they became interested in playing
5 soccer. And so he was just a dad who started coaching and
6 then -- but this -- at the time there wasn't a lot of soccer
7 opportunities like there are now. And he just -- he started a
8 club, and based on his love for baseball, he named it the San
9 Francisco Seals.

10 **THE COURT:** Oh, I love that.

11 **PROSPECTIVE JUROR 22:** So my husband, it's -- it's his
12 company. It's his business now and --

13 **THE COURT:** Oh, that's great. So I won't ask you
14 whether you enjoy it or not because you could only get in
15 trouble with the answer.

16 (Laughter)

17 **THE COURT:** So are you aware of -- of any reason why
18 you couldn't serve as a fair and impartial juror in this case?

19 **PROSPECTIVE JUROR 22:** Nothing. No, nothing I can
20 think of.

21 **THE COURT:** Okay. Thank you.

22 Juror Number 28, please.

23 (Pause in proceedings.)

24 **PROSPECTIVE JUROR 28:** Good morning.

25 **THE COURT:** Good morning. How are you?

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1 **PROSPECTIVE JUROR 28:** Good. How about yourself?

2 **THE COURT:** Good. And so at the moment am I right
3 that you're retired?

4 **PROSPECTIVE JUROR 28:** That's correct.

5 **THE COURT:** And what are you doing? How are you
6 spending your days?

7 **PROSPECTIVE JUROR 28:** I do quite a bit of maintenance
8 work on various buildings and things like that.

9 **THE COURT:** Uh-huh. And which -- is that -- are you
10 using any of the skills that you had as an IT executive at Gap.

11 **PROSPECTIVE JUROR 28:** No.

12 (Laughter)

13 **THE COURT:** Tell me about the -- tell me about your
14 work at Gap.

15 **PROSPECTIVE JUROR 28:** Um, I designed and led the
16 teams that built most of their inventory and distribution
17 management systems.

18 **THE COURT:** That's great. And when did you -- how
19 long have you been retired?

20 **PROSPECTIVE JUROR 28:** I have been retired, let's see,
21 about almost ten years.

22 **THE COURT:** Is there -- are you aware of any reason
23 why you couldn't serve as a fair and impartial juror here?

24 **PROSPECTIVE JUROR 28:** No, sir.

25 **THE COURT:** Great. Thank you.

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1 Juror Number 39, please.

2 (Pause in proceedings.)

3 **PROSPECTIVE JUROR 39:** Morning.

4 **THE COURT:** Good morning. How are you?

5 **PROSPECTIVE JUROR 39:** Doing well. Yourself?

6 **THE COURT:** I'm doing very well. Thank you.

7 So you are a lawyer?

8 **PROSPECTIVE JUROR 39:** Yes.

9 **THE COURT:** And how long have you been a lawyer?

10 **PROSPECTIVE JUROR 39:** About three years now.

11 **THE COURT:** And what is -- right now, describe what
12 you are doing for Alameda Health System?

13 **PROSPECTIVE JUROR 39:** Yes, I'm the contracts counsel.
14 Any and all contracts coming into Alameda, whether they need
15 repairs on elevators, whether we need surgical devices, within
16 that range, all the contracts come to me and I draft them up
17 and negotiate those contracts.

18 **THE COURT:** That's great. Have you been -- is that
19 what you have been doing since graduating?

20 **PROSPECTIVE JUROR 39:** No. For two years I did family
21 law. Got out of that rather quickly.

22 **THE COURT:** And were you doing that in Alameda?

23 **PROSPECTIVE JUROR 39:** No. I was San Jose.

24 **THE COURT:** I take it you don't know any of the -- any
25 of the lawyers here?

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1 **PROSPECTIVE JUROR 39:** No.

2 **THE COURT:** The -- you have a brother who works for
3 Tesla?

4 **PROSPECTIVE JUROR 39:** Yes.

5 **THE COURT:** And how long has he been doing that; do
6 you know?

7 **PROSPECTIVE JUROR 39:** A guesstimate, maybe
8 four years.

9 **THE COURT:** Is there anything about your brother's
10 work for Tesla that would make you either feel more positively
11 or negatively towards Tesla and would impact your ability to be
12 a fair and impartial juror?

13 **PROSPECTIVE JUROR 39:** No.

14 **THE COURT:** Is there anything you can think of that
15 would -- any reason why you would not be able to serve as a
16 fair and impartial juror?

17 **PROSPECTIVE JUROR 39:** No.

18 **THE COURT:** Okay. Thank you.
19 Juror Number 43, please.

20 (Pause in proceedings.)

21 **PROSPECTIVE JUROR 43:** Good morning, Your Honor.

22 **THE COURT:** Good morning. How are you?

23 **PROSPECTIVE JUROR 43:** Doing well. How about you?

24 **THE COURT:** Excellent. So you are doing sales for
25 LinkedIn. Tell me what -- how -- tell me what that's like.

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1 **PROSPECTIVE JUROR 43:** Yeah. I started about
2 two years ago. I'm selling LinkedIn Learning and LinkedIn
3 Recruiting to other businesses who need it.

4 **THE COURT:** And are you -- and how are you doing that
5 job?

6 **PROSPECTIVE JUROR 43:** It's a lot of, like, talking to
7 customers on Zoom and working remotely but, I also go into the
8 office, so kind of hybrid.

9 **THE COURT:** And are you enjoying it?

10 **PROSPECTIVE JUROR 43:** Yeah, I really like it.

11 **THE COURT:** That's great. Let me see.

12 (Pause in proceedings.)

13 **THE COURT:** Are you aware of any reason why you
14 couldn't serve as a fair and impartial juror?

15 **PROSPECTIVE JUROR 43:** About two years ago, I was in a
16 pretty serious car accident that led to a lawsuit.

17 **THE COURT:** Okay. And is there anything about that
18 that would impact the way that you evaluate the evidence here.
19 This has nothing to do with a car accident. I suspect that
20 none of the parties involved there were involved here. So tell
21 me how you think that -- whether you think that might affect
22 you as a juror.

23 **PROSPECTIVE JUROR 43:** Yeah, I mean, I -- I was the
24 one who sued the responsible -- the driver who was responsible.
25 But other than that, like, I would do the best of my ability to

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1 be impartial.

2 **THE COURT:** Would that -- would the fact that you were
3 the person who did the suing, would that make at the start of
4 the case you be more sympathetic to Mr. Diaz, who is the person
5 doing the suing here, or would you just judge the evidence as
6 it comes in, treating each side fairly and then making a
7 determination based on that?

8 **PROSPECTIVE JUROR 43:** I think I would judge the
9 evidence as it comes in.

10 **THE COURT:** Okay.

11 **PROSPECTIVE JUROR 43:** Yeah.

12 **THE COURT:** Great. Thank you very much.

13 **PROSPECTIVE JUROR 43:** Thank you.

14 **THE COURT:** Juror Number 44.

15 (Pause in proceedings.)

16 **THE COURT:** Come on up.

17 (Pause in proceedings.)

18 **PROSPECTIVE JUROR 44:** Hello.

19 **THE COURT:** Good morning. How are you?

20 **PROSPECTIVE JUROR 44:** I'm well. How about yourself?

21 **THE COURT:** I'm doing so well. And I thank everybody
22 for asking me how I'm doing --

23 (Laughter)

24 **THE COURT:** -- when I'm asking you how you're doing,
25 but I continue to do quite well so...

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(Laughter)

THE COURT: So tell me -- tell me what you do.

PROSPECTIVE JUROR 44: I'm also retired like some of the other individuals here.

THE COURT: And how are you spending your time?

PROSPECTIVE JUROR 44: I split my time between Sonoma County and Yuba County. We have a small farm up in the foothills. I go back and forth every week.

THE COURT: Oh, wow. And what are you growing?

PROSPECTIVE JUROR 44: Well, just a small vegetable garden, but we raise sheep and alpacas.

THE COURT: Oh, wow. How long have you been doing that?

PROSPECTIVE JUROR 44: About ten years.

THE COURT: And how long have you been retired?

PROSPECTIVE JUROR 44: 12.

THE COURT: And before you were a psychiatric technician. What does that mean?

PROSPECTIVE JUROR 44: I worked at Sonoma Developmental Center, which is a facility that provides total services to the mentally disabled.

THE COURT: And the technician part of things, were you just working with patients, or was there something more?

PROSPECTIVE JUROR 44: It was a supervisory role. Being a psychiatric technician is similar to that of a LVN, but

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1 where an LVN has OB service, we have a psych block instead, so
2 it's nursing.

3 **THE COURT:** I see.

4 **PROSPECTIVE JUROR 44:** So it's nursing.

5 **THE COURT:** Are you aware of any reason you couldn't
6 serve as a fair and impartial juror?

7 **PROSPECTIVE JUROR 44:** No.

8 **THE COURT:** Great. Thank you.

9 Juror Number 46, please.

10 (Pause in proceedings.)

11 **PROSPECTIVE JUROR 46:** Good morning.

12 **THE COURT:** Good morning. How are you?

13 **PROSPECTIVE JUROR 46:** I'm good. Thank you.

14 **THE COURT:** Good. So tell me what you're doing.

15 **PROSPECTIVE JUROR 46:** Well, I am a chemical
16 engineering background, and I lead a manufacturing facility for
17 pharmaceutical, so we develop gene therapy products for rare
18 diseases.

19 **THE COURT:** And how long have you been doing that?

20 **PROSPECTIVE JUROR 46:** I've been working for 18 years.

21 **THE COURT:** Okay. At the same place?

22 **PROSPECTIVE JUROR 46:** Yes.

23 **THE COURT:** Good for you.

24 And you're -- you're living with someone who is a
25 statistician; is that right?

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1 **PROSPECTIVE JUROR 46:** Yes. That's my husband.

2 **THE COURT:** Your husband. And where does he work?

3 **PROSPECTIVE JUROR 46:** He works in the nonprofit
4 WestEd Educational Research Company for -- yeah, education
5 research.

6 **THE COURT:** Okay. And you indicated that you weren't
7 sure whether you had strong feelings about awarding money to
8 the winning party in a civil case. Tell me -- tell me what you
9 were thinking.

10 **PROSPECTIVE JUROR 46:** I actually don't understand
11 that question.

12 **THE COURT:** Oh, okay. Well, so would you be able to
13 follow my instructions on -- on how the law works and, in this
14 case, award damages based on those instructions because I will
15 instruct you that the Plaintiff is entitled to certain damages.
16 It will be the jury's determination to figure out what the fair
17 amount of damages is.

18 Would you be able to do that?

19 **PROSPECTIVE JUROR 46:** I think so. Yeah.

20 **THE COURT:** Is there any reason in your mind why you
21 wouldn't be able to do it?

22 **PROSPECTIVE JUROR 46:** No. I think I just
23 misunderstood the question. When I read it, I don't quite --
24 I'm not sure what it means.

25 **THE COURT:** I appreciate that. Okay.

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1 And the same thing, the other question concerned awarding
2 money, compensation over nonfinancial harms, like mental and
3 emotional suffering. That will be an issue in this case.

4 Would you be able to follow my instructions and -- and
5 deliberate with your fellow jurors and arrive at a -- what you
6 thought was a fair compensation for the emotional harms?

7 **PROSPECTIVE JUROR 46:** I think so if the guidance is
8 clear.

9 **THE COURT:** Guidance is necessary, absolutely. And
10 you will get plenty of guidance that is not evidence from the
11 lawyers who will argue, and you'll get legal guidance from me,
12 which you need to follow, which are the -- will be the
13 instructions in the case. All right?

14 **PROSPECTIVE JUROR 46:** Yeah.

15 **THE COURT:** Okay. So besides that, is there any
16 reason why you couldn't -- you think you would not be able to
17 be a fair and impartial juror in this case?

18 **PROSPECTIVE JUROR 46:** No.

19 **THE COURT:** Okay. Thank you very much.

20 **PROSPECTIVE JUROR 46:** Thank you.

21 **THE COURT:** Juror Number 47, please.

22 (Pause in proceedings.)

23 **PROSPECTIVE JUROR 47:** Good morning, Your Honor. How
24 are you?

25 **THE COURT:** I'm very well. How are you?

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1 **PROSPECTIVE JUROR 47:** Good. Thanks.

2 **THE COURT:** So you are also in sales. Tell me what
3 you do.

4 **PROSPECTIVE JUROR 47:** I manage a lumberyard, sales
5 and purchasing. So two sides of the coin. Probably about
6 30 people.

7 **THE COURT:** And how long have you been doing that?

8 **PROSPECTIVE JUROR 47:** Eleven years now.

9 **THE COURT:** Do you enjoy it?

10 **PROSPECTIVE JUROR 47:** I do.

11 **THE COURT:** And what were you doing before that?

12 **PROSPECTIVE JUROR 47:** Graduate school.

13 **THE COURT:** And was -- was graduate school at UCLA?

14 **PROSPECTIVE JUROR 47:** Yes.

15 **THE COURT:** And otherwise, you were at a very fine
16 institution, Boston College?

17 **PROSPECTIVE JUROR 47:** Yes, sir.

18 (Laughter)

19 **THE COURT:** Okay. I just -- I note things that matter
20 to me, and that's one of them.

21 (Laughter)

22 **THE COURT:** So --

23 **PROSPECTIVE JUROR 47:** Go Eagles.

24 **THE COURT:** Go Eagles. Indeed.

25 So in your -- you're in a managerial role, and you

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1 indicated that you -- you've had employees accuse other
2 employees of harassment.

3 And is there anything about the experience that you've had
4 with employee disputes of any sort that would make you side
5 initially with the employer as opposed to the employee or have
6 any sort of bias one way or another with respect to an
7 employment dispute?

8 **PROSPECTIVE JUROR 47:** I don't think so. I've kind of
9 seen it -- I've seen the employer's obligation to do their
10 investigation, and I think I understand that the employer has
11 an obligation as well but that, you know, just because somebody
12 says one thing one time doesn't necessarily mean that you have
13 to do -- do what they would like you to which can get tricky
14 with people and -- but no. I can definitely be objective
15 considering this matter.

16 **THE COURT:** Okay. Yeah. And that's really the bottom
17 line.

18 Do you think -- is there any reason you can think of that
19 you couldn't be a fair and impartial juror in this case?

20 **PROSPECTIVE JUROR 47:** No.

21 **THE COURT:** Okay. Thank you.

22 Juror Number 52, please.

23 (Pause in proceedings.)

24 **PROSPECTIVE JUROR 52:** Good morning.

25 **THE COURT:** Good morning. How are you?

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1 **PROSPECTIVE JUROR 52:** Good. Thank you.

2 **THE COURT:** Good. And so you work with the Postal
3 Service.

4 **PROSPECTIVE JUROR 52:** Yes.

5 **THE COURT:** And where -- what area are you a carrier
6 in?

7 **PROSPECTIVE JUROR 52:** In Danville.

8 **THE COURT:** Have you been in Danville for the last
9 several years?

10 **PROSPECTIVE JUROR 52:** Yes.

11 **THE COURT:** Good for you. Thank you for doing what
12 you do.

13 You've not heard a lot about this case, but are you aware
14 of any reason that you couldn't serve as a fair and impartial
15 juror?

16 **PROSPECTIVE JUROR 52:** Can you repeat me that?

17 **THE COURT:** Yes. Are you aware of any reason that you
18 wouldn't be able to be fair and impartial in this case?

19 **PROSPECTIVE JUROR 52:** No.

20 **THE COURT:** Okay. Great. Thank you. I appreciate
21 it.

22 All right. So, ladies and gentlemen, the -- if I did not
23 call you up here, it's because I am wanting to speak with you
24 individually outside the presence of the other jurors.

25 So I'm going to describe -- pay close attention now to

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1 what I'm saying. Everybody should pay close attention to what
2 I'm saying -- not that you haven't been so far, but even more
3 so.

4 Everybody who I've just called up to the microphone and
5 asked those series of questions ending with "Could you serve as
6 a fair and impartial juror?" I want you to come back in an
7 hour. Don't leave yet. I'm going to give you an instruction.

8 But I'd like you to look at the beautiful pictures we have
9 in the hallways on the 17th and the 19th floor. Use your cell
10 phones. Do things except for what I tell you you can't do,
11 which I'll get to in a moment. But I'd like you to be back in
12 an hour.

13 Everybody else, I would like you to stay right outside the
14 courtroom, and Ms. Davis is going to come get you individually
15 and -- and I will ask you some more questions, and then we'll
16 reconvene here hopefully at 11:30, assuming that I am done with
17 the individual questions, and we'll do a little bit more work.
18 Things are going just smoothly, but I think that's way that we
19 need to go.

20 And those people who I haven't asked questions of, you
21 should bring your number with you. That will remind you what
22 number you have, and that's how Ms. Davis will be able to
23 escort you back in.

24 So -- and when -- when everybody is back here, it's very
25 important that you come back to the same seat that you're in.

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1 I want everybody to be punctual, so 11:30 means 11:30. I'm the
2 only one who can be late, and the reason I can be late is I'll
3 be doing something that's directly related to what we're all
4 doing here.

5 While we're on the break, please do not discuss the
6 subject matter of what we've been doing today. Don't discuss
7 the case, the questionnaire, or the proceedings with anybody.
8 Do not do any research on the case. So when I said you can use
9 your cell phones, fine. No research on the case.

10 Don't communicate with anyone about it -- about anything
11 concerning it by phone, text, social media post, or post
12 anything about it anywhere. If you see the lawyers or anyone
13 connected with the case, don't say "hi." I know that's kind of
14 rude, but that is the way -- there should be no communication
15 whatsoever with them.

16 If you're selected as a juror in the case, I'm going to
17 have a much longer instruction for you, but for now, no
18 communication with anybody about the case in any way. And if
19 you hear other people communicating about it, walk away. Let
20 Ms. Davis know.

21 If this instruction is disregarded, I might have to
22 declare a mistrial and do this all over again. These rules
23 protect everyone and ensure that the verdict is rendered in
24 this case solely on what the parties bring out here in court.

25 It assures both the fairness and the reality of absolute

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1 impartiality, which is what the parties and the Court expect of
2 you.

3 So with that, I'm going to ask Juror Number 3 to remain
4 here, and everyone else, do what I just told you. If you've
5 talked to me, go for an hour. If not, stay outside and wait.

6 (Proceedings were heard outside the presence of the
7 prospective jury panel except for Prospective Juror 3:)

8 **THE COURT:** All right. Please be seated, everybody.

9 And Juror Number 3, if you wouldn't mind going to the mic.

10 **PROSPECTIVE JUROR 3:** Good morning, Your Honor.

11 **THE COURT:** Good morning. How are you?

12 **PROSPECTIVE JUROR 3:** I'm well. Thank you.

13 **THE COURT:** Good. So tell me what you do.

14 **PROSPECTIVE JUROR 3:** I work in the tech field. I'm a
15 product manager, I have a team of product managers and
16 developers. I work for Zoom, so...

17 **THE COURT:** So you've been a very popular fellow.

18 (Laughter)

19 **PROSPECTIVE JUROR 3:** Yeah.

20 **THE COURT:** And are you enjoying that work?

21 **PROSPECTIVE JUROR 3:** I am. Thank you. Yeah.

22 **THE COURT:** Good. So the -- in answer to the question
23 about strong feelings about Mr. Musk, my copy, anyway, started
24 with -- there was an answer yes, and then it started but then I
25 lost what you were thinking. So tell me -- tell me what your

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1 perspective is on Mr. Musk.

2 **PROSPECTIVE JUROR 3:** Well, Mr. Musk is -- I mean
3 everybody knows him. He's, you know, extremely knowledgeable
4 in what he does, and, you know, he has strong opinions. He's a
5 very strong person in terms of the way he works, he operates.

6 You know, part of the news on Twitter currently is the way
7 he's taken over Twitter. But I think at that level, you've got
8 to be -- you know, you've got to have a strong opinion and a
9 strong leader, so he is definitely known as a strong leader.
10 But again, a lot of the questions that came out on Twitter,
11 there's a lot of news in the press around that, so yeah.

12 **THE COURT:** So. Mr. Musk, I can promise you, is not a
13 witness in this case.

14 **PROSPECTIVE JUROR 3:** No, I understand that. Since
15 you asked me what Mr. Musk --

16 **THE COURT:** No. And that's -- I did, and I appreciate
17 your answer.

18 So -- but knowing that he's not involved in any way in the
19 case, is there anything about your feelings about him that
20 would impact your ability to be fair and impartial in this
21 case?

22 **PROSPECTIVE JUROR 3:** No, sir.

23 **THE COURT:** Okay. And so are you aware of any reason
24 you couldn't serve as a fair and impartial juror?

25 **PROSPECTIVE JUROR 3:** No.

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1 **THE COURT:** Great. Thank you. You may be excused and
2 come back at 11:30.

3 **PROSPECTIVE JUROR 3:** 11:30, okay. I just have to
4 grab my bag.

5 **THE COURT:** Yep.

6 (Pause in proceedings.)

7 **THE COURT:** Good morning. You're Juror Number 5, I
8 assume. Do you have your number there? It's over there? It
9 doesn't matter. Glad to have you here. So tell me what a
10 persistence advisor does.

11 **PROSPECTIVE JUROR 5:** It's a really long name to
12 basically just say that I'm a college advisor for students who
13 are in their last year of high school and the first two years
14 of college.

15 **THE COURT:** Well, what a great idea. So the -- so you
16 continue to work with high school seniors through their first
17 two years?

18 **PROSPECTIVE JUROR 5:** Yes. So I work with KIPP
19 NORCAL, so their whole mission and logo and slogan is "KIPP
20 Through College," and so that's the way that they keep their
21 promise to the families and students is that they have someone
22 along the way, especially within those first two crucial years
23 of college, to help them persist along the way.

24 **THE COURT:** That is really great. And so do you go
25 out to the colleges to see them there in addition to -- well,

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1 tell me how you do your job.

2 **PROSPECTIVE JUROR 5:** I do. So my job is also hybrid
3 model, so I go in person to the high school campuses at least
4 once a week. I visit my two main partner campuses, which is
5 S of C and SFCS. And then I contact my own case load of
6 students on my own time, whether it be in the office or at
7 home, and we mostly connect through phone, Zoom.

8 **THE COURT:** That's a terrific job. I'm glad you're
9 doing that. That's great.

10 So the reason that I wanted to talk to you was you had
11 some fairly strong views on Mr. Musk, and so I wanted to
12 explore that a little bit.

13 You indicated that his social media presence was
14 laughable. Is --

15 **PROSPECTIVE JUROR 5:** I personally enjoy it.

16 **THE COURT:** Oh, you do?

17 **PROSPECTIVE JUROR 5:** Yes.

18 **THE COURT:** So you were laughing with it?

19 **PROSPECTIVE JUROR 5:** I think he's quite an
20 interesting man, yes.

21 **THE COURT:** Okay. Well, is there anything about your
22 perspective on him, either positive or negative, that would
23 impact your service as a juror? And you've heard me say he's
24 not involved in this case. There's nothing about Mr. Musk
25 involved in this case. Do you think anything there would

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1 impact your ability to serve?

2 **PROSPECTIVE JUROR 5:** My personal feelings towards his
3 social media presence, his beliefs, and statements he has made,
4 would not impact this in that regard.

5 **THE COURT:** Okay. And you're -- you're leaving a -- a
6 lilt, so let me go to another answer that you gave with respect
7 to Tesla itself, which is that you do have strong feelings
8 about it. So tell me about those.

9 **PROSPECTIVE JUROR 5:** I don't know if this is a
10 positive for the defense or the prosecution, but I'm probably
11 not the best person you want, depending on which side you're
12 on. But unfortunately, I know people who work at Tesla where
13 they were hired by third-party employers or Tesla themselves,
14 and the people that I do know happen to be of Hispanic descent,
15 personal close family friends. And I just have an insight as
16 to the working conditions that are within the company. And
17 whether it be through, like, personal anecdotes or admissions,
18 because obviously I'm not in there, I feel like I have an
19 insight that most people do not.

20 **THE COURT:** Okay. And would you -- what will matter
21 in this case is learning what happens here --

22 **PROSPECTIVE JUROR 5:** Correct.

23 **THE COURT:** -- to Mr. Diaz and -- and viewing the
24 evidence in a completely fair and unbiased way and not starting
25 with any preconceptions about --

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1 **PROSPECTIVE JUROR 5:** Right.

2 **THE COURT:** -- work life at Tesla. Do you think you
3 would be able to divorce what you've been told about that and
4 just focus on the evidence that's presented here?

5 **PROSPECTIVE JUROR 5:** I understand that we're not
6 allowed to know too much about the case just yet, but given
7 what you have told us about the nature, I'm assuming that
8 there's either harassment or discrimination based on verbal
9 identity, so obviously they're protected. And unfortunately, I
10 have seen both my mother and father who were also laborers be
11 discriminated against.

12 **THE COURT:** So do you think you would not -- in light
13 of that, you wouldn't be able to serve as a fair and impartial
14 juror?

15 **PROSPECTIVE JUROR 5:** I felt as though it was
16 important to mention that. I feel like it's important to the
17 case. I just wanted to make sure that was out there.

18 As far as my own ability to serve as a juror and to be
19 impartial, I'm sure I could listen to the evidence. I just --
20 I'm afraid and that's why I just felt it was relevant to let
21 everyone on the --

22 **THE COURT:** It's totally relevant, and I very much
23 appreciate it.

24 Do you think that in light of what you know and the
25 experiences that others close to you have had, that when the

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1 evidence starts, Mr. Diaz is going to be at a slight -- at
2 least a slight advantage given the fact that he is also an
3 employee and he's working at Tesla and he's complaining about
4 the way that he was treated there?

5 **PROSPECTIVE JUROR 5:** I'm sorry. I didn't see the
6 question.

7 **THE COURT:** So the question at the beginning was, do
8 you think they would -- do you think Mr. Diaz would start as --
9 with an advantage --

10 **PROSPECTIVE JUROR 5:** In my eyes?

11 **THE COURT:** -- in your mind?

12 **PROSPECTIVE JUROR 5:** I wouldn't call it necessarily
13 an advantage, it's just something that I'm aware of, of my own
14 biases and understanding intersectionality [sic] and the
15 different identities that are at play here that I myself either
16 may or may not relate to or have, like, existing awareness of
17 other ways that it has played out, I'm not sure. I can't
18 100 percent say yes or no. In the ideal -- I would love to say
19 yes, I'd be your perfect juror.

20 **THE COURT:** Well, I'm glad you're expressing what's
21 real for you. And another thing that you had mentioned was
22 that -- in the question about discrimination, being young and a
23 woman has made -- has caused you to see discrimination in the
24 workplace.

25 **PROSPECTIVE JUROR 5:** Unfortunately, yes.

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1 **THE COURT:** And does that fact -- would that fact
2 impact your ability to sit fairly in this case and give Tesla
3 the -- treated equally to Mr. Diaz as the -- as you learned
4 about what happened to Mr. Diaz?

5 **PROSPECTIVE JUROR 5:** It depends on what happened to
6 Mr. Diaz. I mean I feel like often times as jurors -- the way
7 that I perceive cases and the way that we see them obviously,
8 like, portrayed on TV, it's not reality but oftentimes, you at
9 home find yourself thinking what would I do, what would I say,
10 how would I feel, whether I was in the jury box or I was the
11 person -- the defendant or the claimant myself, so I don't
12 know.

13 **THE COURT:** Okay. Fair enough.
14 You also indicated that you were just in jury selection a
15 year ago; is that right?

16 **PROSPECTIVE JUROR 5:** Yes. For a few days. And
17 apparently even if it's like a week after, it does not count.

18 **THE COURT:** Okay. So you're sure of those dates?

19 **PROSPECTIVE JUROR 5:** Yeah. No. I sent them the
20 picture, and they were like "Hey, it was the 16th. Sorry, your
21 case is on the 20 something."

22 **THE COURT:** Okay. All right. Mr. Spiro, do you have
23 any questions for Juror Number 5?

24 **MR. SPIRO:** Yeah. We have to -- and good morning.
25 How are you?

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1 **PROSPECTIVE JUROR 5:** Good morning. Great.

2 **MR. SPIRO:** We have to -- I didn't hear the question
3 asked of how long that jury service was on the 16th.

4 **PROSPECTIVE JUROR 5:** I didn't serve on the jury.

5 **MR. SPIRO:** Oh, you did not serve?

6 **PROSPECTIVE JUROR 5:** No. I went to jury selection
7 and I served. That counted as my, like, jury service, but I
8 was not on the jury, so I was not selected.

9 **MR. SPIRO:** Okay. I heard the answers earlier. And
10 so given the answers earlier, I don't think I need to follow
11 up, frankly.

12 **THE COURT:** All right. And, Mr. Alexander, or,
13 Mr. Collier, whoever?

14 **MR. ALEXANDER:** Nothing, Your Honor.

15 **THE COURT:** All right. Thank you very much. And if
16 you would come back at 11:30, please.

17 **PROSPECTIVE JUROR 5:** Will do.

18 **THE COURT:** Thank you.

19 You are Juror Number 8; is that right?

20 **PROSPECTIVE JUROR 8:** Yes.

21 **THE COURT:** It is hard for me to keep track of all
22 these things. So good morning.

23 **PROSPECTIVE JUROR 8:** Good morning.

24 **THE COURT:** And tell me how long you've been in human
25 resources and what you do.

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1 **PROSPECTIVE JUROR 8:** Human resources, I want to say
2 since '91, probably. And I work -- but I work in the employee
3 benefits end of things, not in the line of business HR, HR-type
4 of stuff.

5 **THE COURT:** Could you get a little closer to the
6 microphone.

7 **PROSPECTIVE JUROR 8:** Yeah. So I manage group health
8 plans, disability insurance, that kind of thing, on behalf of
9 employees for the employer.

10 **THE COURT:** And how long have you been with Oracle.

11 **PROSPECTIVE JUROR 8:** This stint, I've been there
12 twice, since 2011.

13 **THE COURT:** That's great.

14 So the -- I wanted to ask you about the feelings that you
15 expressed regarding Mr. Musk and his products. So tell me --
16 tell me about your -- I've told you that Mr. Musk isn't
17 involved in the case, but I'd like you to tell me what your
18 perspective is on him.

19 **PROSPECTIVE JUROR 8:** I don't view him favorably, but
20 I understand the distinction you offered at the beginning,
21 which makes total sense, that he's not on trial.

22 **THE COURT:** And the -- the -- Tesla as a company, do
23 you -- because of Mr. Musk, do you view it -- would you be able
24 to view it and Mr. Diaz equally starting the case and make a
25 determination fairly without prejudice based on the evidence in

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1 the case?

2 **PROSPECTIVE JUROR 8:** I think so, yes.

3 **THE COURT:** Okay. Is there anything in your mind that
4 makes you think you wouldn't be able to?

5 **PROSPECTIVE JUROR 8:** Well, I mean, I have fairly
6 strong feelings about the leadership, Musk. So would I buy a
7 Tesla, no, at this point. I don't know. But listening to a
8 case that's disassociated from the head of the company, that's,
9 like you said, a different thing.

10 **THE COURT:** Yeah. This really isn't about buying the
11 product -- whether you would boycott the product because you
12 don't like Mr. Musk or anything like that. It is about,
13 though, being sure that you can listen to what is said about
14 the workplace that Mr. Diaz experienced and determine in this
15 case what -- the amount of damages that he's suffered.
16 Liability has been established in the case, damages have not.
17 And you have to be -- hear the evidence and be fair to both
18 sides in deliberating over the verdict. Do you think you could
19 do that?

20 **PROSPECTIVE JUROR 8:** Yes, I do.

21 **THE COURT:** Okay. Mr. Spiro, any questions?

22 **MR. SPIRO:** Yes.

23 Good morning, sir.

24 **PROSPECTIVE JUROR 8:** Good morning.

25 **MR. SPIRO:** I appreciate your brutal honesty about

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1 your feelings and, you know, you've indicated on this -- you
2 know, your forms that you have a high level of disdain and you
3 can't separate Mr. Musk from Tesla, to such an extent that you
4 boycott the product.

5 So I understand that, you know, at some level, boycotting
6 a product and deciding a case are different; right. They are
7 different. But there's at least some similarities, which are
8 because you are animus towards the person is so strong; right?
9 It's causing you, even if you like the car better, to not pick
10 it; right? Is that fair?

11 **PROSPECTIVE JUROR 8:** Yes, I would not buy the car.

12 **MR. SPIRO:** So what I'm sort of getting at is, you
13 know, here you have to start completely equal without any even,
14 you know, like a touch of leaning in either direction. And,
15 you know, I expect that they are going to say: Listen, this
16 issue with Tesla permeates the company, and you just said you
17 have questions about Tesla's leadership.

18 So I'm having a hard time where I need to ask you, you
19 know, can you give a hundred percent unequivocal assurance that
20 that strong feeling you have won't impact you here?

21 **PROSPECTIVE JUROR 8:** I don't -- can anyone ever give
22 a hundred percent assurance? You know, I'm human.

23 So I suppose -- I mean, if I can listen to the case and
24 the circumstances surrounding a case and disconnect it from
25 Elon Musk. And I guess I just want to make sure, you know, my

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1 feelings for Elon Musk are not anything going postal. I just
2 don't -- politically don't agree with him, so.

3 **MR. SPIRO:** No, I understand that. And I don't -- you
4 seem like a fair person, and I'm not -- it's just if you walk
5 into a case, right, you can think in sort of the halls of
6 justice. You would want to walk into a case with having zero
7 feelings about either side; right. It's -- I don't ask
8 everybody for this sort of hundred percent assurance, but when
9 somebody comes in and says the leader of the company, they
10 can't stand them, right, I have to ask.

11 **PROSPECTIVE JUROR 8:** No, of course. I understand.
12 In fact, I was surprised. There was a part of me that thought
13 because I said that, I probably wouldn't be called in. That's
14 not why I said that on the questionnaire, though.

15 **MR. SPIRO:** But then I guess I'd ask you that. Why
16 did that -- saying that make you think that you wouldn't be
17 called in, that you wouldn't be right for this?

18 **PROSPECTIVE JUROR 8:** Well, it didn't make me think I
19 wouldn't be right for this but for the reasons that you are now
20 bringing up.

21 **MR. SPIRO:** So I get the point about hundred percent.
22 So what the law says is what they call an unequivocal
23 assurance, right, where you don't waiver at all, where you say
24 to yourself many moons from now when you look back, you really,
25 really were able to start even on this case and not -- even

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1 though you don't -- you have feelings about the leadership of
2 one company, don't start even slightly swayed.

3 So I have to ask you, are you sure that you can give that
4 unequivocal assurance?

5 **PROSPECTIVE JUROR 8:** Well, no. I'm not sure I can be
6 unequivocal, I guess. But I don't really know how anyone is
7 unequivocal. I'm not trying to be difficult.

8 **MR. SPIRO:** No, no, no. You're not being difficult at
9 all. These are fair questions. These are complicated issues.

10 **PROSPECTIVE JUROR 8:** We all have --

11 **MR. SPIRO:** If you walked in a case about the dry
12 cleaner and who returned the ticket, you can say to me I don't
13 know anything about this and this is unequivocal. I can
14 definitely -- I know nothing. But here it's harder, which is
15 why I'm asking you that, and I understand that given what your
16 answer is.

17 So I don't have anything further. Thank you.

18 **THE COURT:** Mr. Alexander.

19 **MR. ALEXANDER:** Yes, please. Thank you, Your Honor.

20 If you are instructed that Tesla has already been found
21 liable and that you don't have to make a determination about
22 liability, just damages, could you follow the Court's
23 instructions?

24 **PROSPECTIVE JUROR 8:** That's a good point. Yes.

25 **MR. ALEXANDER:** And given that, that you wouldn't have

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1 to be making a determination as to liability, would that allow
2 you to say that you could make a determination without any
3 biases coming into your thought process?

4 **PROSPECTIVE JUROR 8:** Yes.

5 **MR. ALEXANDER:** I have nothing further, Your Honor.

6 **THE COURT:** All right. Thank you very much.

7 **PROSPECTIVE JUROR 8:** That's it?

8 **THE COURT:** That's it. Well, it's not really if you
9 have to come back at 11:30.

10 (Pause in the proceedings.)

11 **THE COURT:** We are back to Juror Number 9, is that
12 right?

13 **PROSPECTIVE JUROR 9:** Yes.

14 **THE COURT:** And you own Tesla stock; correct?

15 **PROSPECTIVE JUROR 9:** Yes, I do.

16 **THE COURT:** Okay. So the only -- there's actually
17 nothing more that I need to ask you. We are going to have to
18 excuse you as a witness -- as a juror. So you may go up to the
19 jury office and tell them that you're excused. I appreciate
20 your -- your service. You've done your duty as a citizen
21 today.

22 **PROSPECTIVE JUROR 9:** All right. Thank you. Have a
23 good day.

24 **THE COURT:** Thank you. You, too.

25 (Pause in proceedings.)

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1 **THE COURT:** Good morning.

2 **PROSPECTIVE JUROR 15:** Good morning.

3 **THE COURT:** You are Juror Number 15?

4 **PROSPECTIVE JUROR 15:** I am.

5 **THE COURT:** Okay. And tell me what you do.

6 **PROSPECTIVE JUROR 15:** I'm a designer.

7 **THE COURT:** And -- so what are you designing for Love
8 Good Color PBC? What is that?

9 **PROSPECTIVE JUROR 15:** We design color material and
10 finishes for commercial products and interiors.

11 **THE COURT:** And how long have you been doing that?

12 **PROSPECTIVE JUROR 15:** About ten years.

13 **THE COURT:** Do you like it?

14 **PROSPECTIVE JUROR 15:** I love it.

15 **THE COURT:** That's great. That is great.

16 So you indicated that even though you like Tesla products,
17 you choose not to buy them because of Mr. Musk and your strong
18 views about him; is that right?

19 **PROSPECTIVE JUROR 15:** Correct.

20 **THE COURT:** And so I've explained to you earlier,
21 Mr. Musk isn't involved in this case at all, and the issues in
22 the case involve the workplace, and so he is just -- he is
23 not -- he is not in it.

24 Are your feelings about Mr. Musk so strong that when the
25 case begins, you would think that Mr. Diaz would have an

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1 advantage over Tesla in your mind?

2 **PROSPECTIVE JUROR 15:** No.

3 **THE COURT:** You think you could serve as a fair and
4 impartial juror?

5 **PROSPECTIVE JUROR 15:** Yes.

6 **THE COURT:** Mr. Spiro, do you have any questions?

7 **MR. SPIRO:** Yes.

8 So, good morning. How are you?

9 One of the things that you said on the questionnaire was
10 that, if I read it correctly, that one of the issues you have
11 with Mr. Musk is the way he treats his employees.

12 **PROSPECTIVE JUROR 15:** Yes.

13 **MR. SPIRO:** Okay. So this case is about the way one
14 of his companies treats an employee, and those are the
15 allegations.

16 And so if you come into it thinking that, you know, I'm
17 having sort of a hard time figuring out how one could block
18 that from their mind and be fair and impartial. So what the
19 Court asks is can you give an unequivocal assurance that you
20 don't sway at the start in one way or another.

21 And so I have to ask that. It's my responsibility to ask
22 you that, too.

23 **MR. ALEXANDER:** May I object, Your Honor. I don't
24 believe that's the standard.

25 **THE COURT:** It's -- I'm not sure -- I'm going to allow

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1 him to say it. I would not instruct you on that it's
2 unequivocal. But I do -- it is very important that you be able
3 to assure us that people would start at the -- on the same fair
4 level without one side being -- having an advantage in your
5 mind than another. That's really the issue.

6 **PROSPECTIVE JUROR 15:** Yeah. I think I could do that.
7 I don't -- I mean, he doesn't work at Tesla, so, I mean.

8 **MR. SPIRO:** Sorry. I couldn't --

9 **PROSPECTIVE JUROR 15:** I can separate that.

10 **MR. SPIRO:** I didn't catch that sentence. I
11 apologize.

12 **PROSPECTIVE JUROR 15:** Well, Elon Musk doesn't work at
13 Tesla with the employees directly and from my understanding.
14 So I could separate that for sure.

15 **MR. SPIRO:** Right. So if there was an argument for
16 example, you know, listen, the -- this goes all the way to
17 Tesla leadership, you need to punish Tesla.

18 **MR. ALEXANDER:** Object. This is preconditioning,
19 asking for a determination.

20 **MR. SPIRO:** It is a fair question.

21 **THE COURT:** Overruled. You can go ahead.

22 **MR. SPIRO:** If they were to argue, you know, this is,
23 you know, goes all the way up, this is part of leadership, this
24 is part of the culture there, you need to punish them, I mean,
25 won't the fact that you feel that way about him and the way he

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1 treats his employees impact your ability here? It's hard to
2 imagine, from my perspective, that it wouldn't.

3 **PROSPECTIVE JUROR 15:** I suppose that I could, but
4 I -- like you said, starting at the trial, I don't know that to
5 be true. I wouldn't come in with that impartial --

6 **MR. SPIRO:** Right. But I'm saying, assuming basically
7 when they stand up, they say that. They say this is our view
8 of the facts and this is what we're asking you to do to punish
9 Tesla for harm to employees.

10 **PROSPECTIVE JUROR 15:** I --

11 **MR. SPIRO:** You still think that you can --

12 **PROSPECTIVE JUROR 15:** Without knowing all of the
13 details already, I think that I could, but I don't know. I --
14 I don't know how to answer that except for truthfully.

15 **MR. SPIRO:** Right. Well, when I hear people say --
16 when I hear people come in with as strong of views as you do
17 and they say "I think," it's hard to not -- to not follow up.

18 So what happened to Mr. Diaz happened to Mr. Diaz, right.
19 You're going to be asked to look at damages, and what they're
20 going to argue to you in damages is this place needs to be
21 punished.

22 And you're coming into the case saying the leader of the
23 place and how he treats his employees I don't agree with.

24 So when they say that, aren't they speaking to an audience
25 that is receptive before -- before jump street, right, before

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1 it even begins. And I think from your answers that has to be
2 true.

3 **PROSPECTIVE JUROR 15:** The experience of the employee was,
4 like -- was personal. I didn't work there, but I know someone
5 did that knew him personally. So it's not like to Tesla at
6 large.

7 **MR. SPIRO:** Oh, so I see your point. Your point is
8 that it was an individual experience that is relayed to you.

9 **PROSPECTIVE JUROR 15:** That worked with him
10 personally.

11 **MR. SPIRO:** I see.

12 **PROSPECTIVE JUROR 15:** So to me, it doesn't carry out
13 to Tesla the company.

14 **MR. SPIRO:** And who was this person to you, if I may
15 ask without prying?

16 **PROSPECTIVE JUROR 15:** It is the daughter of a close
17 friend, yeah.

18 **MR. SPIRO:** And did you think that situation was
19 treated fairly by the company?

20 **PROSPECTIVE JUROR 15:** It wasn't -- it didn't involve
21 the company, and that's why I don't feel it was related. But
22 yeah.

23 **MR. SPIRO:** I see. Okay. I have no further questions
24 at this time.

25 **THE COURT:** All right. Mr. Alexander, anything?

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1 **MR. ALEXANDER:** Nothing else.

2 **THE COURT:** Okay. Thank you very much.

3 **PROSPECTIVE JUROR 15:** Does that mean I come back at
4 11:30?

5 **THE COURT:** Come back at 11:30.

6 **MR. SPIRO:** Can we have a brief moment before the
7 juror comes in?

8 **THE COURT:** Ms. Davis, wait for just a sec. Hang on
9 just a second.

10 (Pause in proceedings.)

11 **MR. SPIRO:** Thank you, Your Honor. So having not
12 tried cases before Your Honor before and done jury selection --
13 judges that I try cases in front of I can tell and so I will
14 talk less or more -- but one of the issues that I see that is
15 coming up is this idea that because this is a damages trial,
16 like, if the person doesn't -- seems to be that the questions
17 or the suggestions is well, if this person has strong feelings,
18 what does it really matter? Liability has been established.
19 That's not, of course, my view. And in fact, when you think
20 about punitive damages, these --

21 **THE COURT:** Mr. Spiro, why are you making this
22 argument now while we're talking with the jurors? Can't you
23 make this argument after the questioning is done? I've been
24 giving you a very broad leash.

25 **MR. SPIRO:** Sure.

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1 **THE COURT:** I haven't decided how many of your
2 15 minutes at the end I'm going to take away, but --

3 **MR. SPIRO:** I will be quiet now, Judge.

4 **THE COURT:** All right. Let's get the next person.

5 (Pause in proceedings.)

6 **THE COURT:** Good morning. You are Juror Number 17?

7 **PROSPECTIVE JUROR 17:** Yes, I am.

8 **THE COURT:** Great. And so tell me what you do.

9 **PROSPECTIVE JUROR 17:** I am a business license and
10 compliance specialist/paralegal.

11 **THE COURT:** So tell me what that means every day.

12 **PROSPECTIVE JUROR 17:** I pull business licenses for
13 AAA throughout the United States.

14 **THE COURT:** And how long have you been doing that?

15 **PROSPECTIVE JUROR 17:** I have been with AAA for about
16 a year and a half, but I have been doing licensing and
17 compliance for three years, four years, and I was a paralegal
18 for almost nine years.

19 **THE COURT:** So the -- you indicated that you had heard
20 of -- about Elon Musk and had -- and had strong feelings about
21 him. You've heard me say that he is not involved in this
22 case --

23 **PROSPECTIVE JUROR 17:** Oh, yeah.

24 **THE COURT:** -- at all. Is there anything about your
25 feelings about Mr. Musk that make you think you couldn't be

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1 fair and impartial in this case?

2 **PROSPECTIVE JUROR 17:** No.

3 **THE COURT:** And you also have a family friend who
4 works for Tesla?

5 **PROSPECTIVE JUROR 17:** He did. I'm not sure if he
6 still works there because they ended up moving to Stockton.

7 **THE COURT:** Was there anything -- did you ever talk
8 with that person about working at Tesla?

9 **PROSPECTIVE JUROR 17:** No. I talked to his wife.

10 **THE COURT:** Is there anything that you're aware of
11 that makes you think you could not be a fair and impartial
12 juror in this case?

13 **PROSPECTIVE JUROR 17:** No.

14 **THE COURT:** Great. Thank you very much.

15 **PROSPECTIVE JUROR 17:** Thank you.

16 (Pause in proceedings.)

17 **THE COURT:** Good morning. How are you?

18 **PROSPECTIVE JUROR 23:** I'm great. How are you?

19 **THE COURT:** Also great. Thank you.

20 So you are the chief accounting officer at Coinbase?

21 **PROSPECTIVE JUROR 23:** Yes, I am.

22 **THE COURT:** Is that a challenging position today?

23 **PROSPECTIVE JUROR 23:** It is very challenging, yes.

24 **THE COURT:** Are you enjoying it?

25 **PROSPECTIVE JUROR 23:** I love it. I have been doing

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1 it for years.

2 (The court reporter asked for clarification.)

3 **THE COURT:** This is Juror Number 23.

4 So you indicated strong feelings about Mr. Musk. I have
5 told you that he is not involved in this case. Is there
6 anything about those strong feelings that you think would carry
7 over into your ability to evaluate the evidence fairly to both
8 sides?

9 **PROSPECTIVE JUROR 23:** No. I actually -- given now
10 what I know the case is about, my biggest thing is just given
11 my position at Coinbase, I'm party to these types of lawsuits
12 all the time and employment matters, and so I do feel that I
13 would have some bias, just given my position as an executive.

14 **THE COURT:** So you --

15 **PROSPECTIVE JUROR 23:** Not particularly related to
16 Elon. It's just more of probably I would side more with Tesla.

17 **THE COURT:** Okay. So you would side -- you think you
18 would side more with Tesla just given the experience that you
19 have and the perspective that you bring to any employment case?

20 **PROSPECTIVE JUROR 23:** Yeah. For the most part yes,
21 that's correct.

22 **THE COURT:** Okay. So you think you would not be able
23 to serve as a fair and impartial juror?

24 **PROSPECTIVE JUROR 23:** I hate to say that, but I
25 really just feel I wouldn't be able to serve as a partial [sic]

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1 juror.

2 **THE COURT:** Impartial.

3 **PROSPECTIVE JUROR 23:** Impartial. Sorry.

4 **THE COURT:** Mr. Spiro, is there anything you want
5 to --

6 **MR. SPIRO:** Yes. Thank you.

7 Good morning. I'm assuming that in all of the cases that
8 you have seen that sort of come across your desk, there are
9 some that have more merit and some that have less merit; right?

10 **PROSPECTIVE JUROR 23:** Yes.

11 **MR. SPIRO:** I'm sure there are some that have merit;
12 is that fair?

13 **PROSPECTIVE JUROR 23:** That's fair.

14 **MR. SPIRO:** So in this case, it's the second phase of
15 the case. It's just a damages case; right? So you are not
16 going to have to be determining whether or not liability
17 exists, right, so block that from your mind. I'm not so sure
18 anybody has a better sense of being able to call balls and
19 strikes on accounting matters and not what people -- so my
20 question is sort of knowing that liability has been
21 established, don't you think you could be fair in assessing
22 damages?

23 **PROSPECTIVE JUROR 23:** I just know what the damages
24 do. If I can be just completely transparent, I know what the
25 damages can do to a company and how much work it takes to --

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1 like, how much you have to put in as a company. So if
2 Coinbase, for example, is in a suit like this and we are having
3 to pay damages, we spend so much money even getting to this
4 point, and then the repercussions for the company as well.

5 And so I mean, I'm just saying I would probably side with
6 Tesla and award the lowest amount of damages.

7 **MR. SPIRO:** You are saying that no matter what the
8 facts were, you would zero out the damages?

9 **PROSPECTIVE JUROR 23:** I'm sure I could be objective,
10 try my best. I mean I am a chief accounting officer --

11 **MR. SPIRO:** Right.

12 **PROSPECTIVE JUROR 23** -- but it's more of I'm just
13 being honest.

14 **MR. SPIRO:** Right. Okay. Thank you.

15 **PROSPECTIVE JUROR 23:** Sorry.

16 **MR. SPIRO:** Not at all.

17 **THE COURT:** Mr. Alexander.

18 **MR. ALEXANDER:** Thank you.

19 You had written that people have options and should just
20 get another job. Is that an indication that you have an issue
21 with people filing lawsuits for compensation?

22 **PROSPECTIVE JUROR 23:** Yes.

23 **MR. ALEXANDER:** And so that would prevent you also
24 from being fair and impartial; correct?

25 **PROSPECTIVE JUROR 23:** That's correct.

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1 **MR. ALEXANDER:** Thank you very much for your time.

2 **THE COURT:** You come back at 11:30. Thank you.

3 **PROSPECTIVE JUROR 23:** Thanks so much.

4 (Pause in proceedings.)

5 **THE COURT:** Hi. How are you?

6 **PROSPECTIVE JUROR 24:** I'm doing all right.

7 **THE COURT:** Good. So tell me what you do.

8 **PROSPECTIVE JUROR 24:** Currently, I'm a project
9 manager for an electrical contractor. For the last -- I just
10 changed jobs two months ago, but for the ten years prior to
11 that, I was a mechanical engineer in the aerospace and
12 automotive sectors.

13 **MR. ALEXANDER:** Is this Number 24, Your Honor?

14 **THE COURT:** Yes, it is Number 24. Sorry.

15 **PROSPECTIVE JUROR 24:** Yeah.

16 **THE COURT:** And so do you like your current job?

17 **PROSPECTIVE JUROR 24:** I do, yeah.

18 **THE COURT:** Great. The -- you worked at SpaceX.

19 **PROSPECTIVE JUROR 24:** Yes.

20 **THE COURT:** And you respect the leadership that
21 Mr. Musk provided for it; is that right?

22 **PROSPECTIVE JUROR 24:** Yeah. I acknowledge it's not
23 really relevant. I mean, it was part of the questionnaire, so
24 I wanted to acknowledge it. But yeah.

25 **THE COURT:** Exactly.

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1 **PROSPECTIVE JUROR 24:** I honestly worked with a number
2 of engineers and manufacturing professionals that I respect,
3 and I had positive experiences there.

4 **THE COURT:** So Mr. Musk isn't involved in this case.
5 SpaceX isn't involved in the case. Do you think despite that,
6 because of the respect that you have for him, that Tesla would
7 start off in this case with an advantage in your evaluation of
8 the evidence?

9 **PROSPECTIVE JUROR 24:** I would -- I say as an
10 engineer, right, I think I'm very analytical and can be
11 partial -- impartial I mean. Excuse me. I would say that I
12 know a handful of people that work at Tesla, and I have, you
13 know, a lot of great memories of working at the company that's
14 not part of this lawsuit, a part of this lawsuit.

15 But -- so -- so I guess I -- it's hard to say that I don't
16 have any association between the two because we -- we -- kind
17 of a sister company, but I don't see that as giving Tesla like
18 a leg up or strong bias in my ability to make a decision or
19 listen and hear facts.

20 **THE COURT:** And so the -- the job really is coming in
21 at an absolutely even place with both Mr. Diaz and Tesla and
22 not crediting one more than the other at the start and then
23 evaluating the evidence as it comes in in order to give a fair
24 verdict.

25 Do you think you would be able to treat both Mr. Diaz and

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1 Tesla equally from the start?

2 **PROSPECTIVE JUROR 24:** Yeah. I think I only mentioned
3 it. I wanted to sort of acknowledge, you know, my experience
4 and history but --

5 **THE COURT:** Okay.

6 **PROSPECTIVE JUROR 24** -- I don't see it as inhibitive
7 of hearing both sides. Is that a fair --

8 **THE COURT:** Uh-huh. Do you know anybody who has
9 worked at the Tesla factory in Fremont on the floor?

10 **PROSPECTIVE JUROR 24:** Yeah.

11 **THE COURT:** Have you ever talked with them about their
12 experience?

13 **PROSPECTIVE JUROR 24:** Not recently. Like a year to
14 two ago, I had knew [sic] some individuals who worked there.

15 **THE COURT:** And have they had a positive or a negative
16 experience that they've described to you?

17 **PROSPECTIVE JUROR 24:** I think their -- a little bit
18 of both, right. Its very fast-paced environment which I was --
19 sort of resonated with in my experience, but overall a positive
20 experience.

21 **THE COURT:** Okay. And would you be able to put all of
22 that out of your mind when evaluating the evidence that comes
23 in in this case and just focus on the experience that Mr. Diaz
24 had as explained by the witnesses?

25 **PROSPECTIVE JUROR 24:** I think so.

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1 **THE COURT:** Okay.

2 Mr. Spiro, do you have any question?

3 **MR. SPIRO:** No, Your Honor. Thank you.

4 **THE COURT:** Mr. Alexander?

5 **MR. ALEXANDER:** Yes, please.

6 Good morning, have you any of your friends at Tesla told
7 you any things about the workplace where they were treated
8 fairly or unfairly?

9 **PROSPECTIVE JUROR 24:** No. Usually not.

10 **MR. ALEXANDER:** And in this case, the judge has
11 already indicated liability has been determined, but that would
12 mean that you would have to decide damages, punitive damages.

13 Is there anything about the fact that you might be
14 awarding a large amount of money cause you to think that you
15 might not be able to speak with your friends or that you might
16 have conflict with your friends because of that?

17 **PROSPECTIVE JUROR 24:** No. No.

18 **MR. ALEXANDER:** Nothing further, Your Honor.

19 **THE COURT:** All right. Thank you.

20 So come back at 11:30, please. Going to have to start
21 adjusting that time, I think.

22 (Pause in proceedings.)

23 **THE COURT:** Good morning. How are you?

24 **PROSPECTIVE JUROR 25:** Good. How are you?

25 **THE COURT:** Great.

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1 So this is Juror Number 25.

2 And you work in construction. Tell me what you do.

3 **PROSPECTIVE JUROR 25:** I do fire sprinklers for a
4 living.

5 **THE COURT:** Say it again.

6 **PROSPECTIVE JUROR 25:** I'm sorry. I do fire
7 sprinklers for a living.

8 **THE COURT:** And how long have you been doing that?

9 **PROSPECTIVE JUROR 25:** About 19 years.

10 **THE COURT:** Wow, that -- thank you for keeping us
11 safe.

12 **PROSPECTIVE JUROR 25:** Yeah. Thank you.

13 **THE COURT:** So the -- you indicated that you are a big
14 fan of Mr. Musk's, and you know a couple of coworkers who
15 worked for Tesla, I think.

16 **PROSPECTIVE JUROR 25:** No. I don't know anybody who
17 works for Tesla.

18 **THE COURT:** Oh, okay.

19 **PROSPECTIVE JUROR 25:** Did I say that?

20 **THE COURT:** You did, but -- or at least the survey
21 that I got says that.

22 **PROSPECTIVE JUROR 25:** I want to let you know when I
23 did that survey I was kind of under the influence.

24 (Laughter)

25 **PROSPECTIVE JUROR 25:** If it's a little over

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1 exaggerated.

2 **THE COURT:** Fair enough.

3 **PROSPECTIVE JUROR 25:** Just being honest.

4 **THE COURT:** Well, honesty is always the best policy.
5 So thank you for sharing.

6 The -- your appreciation of Mr. Musk, I've explained that
7 Mr. Musk is not involved in this case at all.

8 **PROSPECTIVE JUROR 25:** Correct.

9 **THE COURT:** And is there anything, though, about your
10 being a big fan of his that you think might bleed over into
11 your view of Tesla or the facts of this case?

12 **PROSPECTIVE JUROR 25:** No.

13 **THE COURT:** Do you think that when the evidence -- can
14 you tell me that when the evidence starts, Tesla and Mr. Diaz
15 will be at the same level in your -- in your evaluation of
16 them?

17 **PROSPECTIVE JUROR 25:** Yes.

18 **THE COURT:** Are you aware of anything -- well, so the
19 other thing that you mentioned is that this is creating a --
20 could create a financial hardship for you; is that right?

21 **PROSPECTIVE JUROR 25:** Your Honor, again, I was under
22 the influence. I was just trying to get out of it at the time.
23 I'm sorry.

24 **THE COURT:** Well, I do -- no, I very much appreciate
25 your candor about this, and your feelings about jury service

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1 are shared by more than a few who will not mention it in quite
2 the same way that you have. So --

3 **PROSPECTIVE JUROR 25:** Every time. This is the
4 furthest I've ever got.

5 (Laughter)

6 **THE COURT:** Okay. So you're not concerned -- I've
7 described to you.

8 **PROSPECTIVE JUROR 25:** It's a week, so I mean, that's
9 not bad. I was expecting an OJ trial.

10 **THE COURT:** Okay. So are you aware of any reason why
11 you could not serve as a fair and impartial juror?

12 **PROSPECTIVE JUROR 25:** No.

13 **THE COURT:** Okay. Mr. Spiro, any questions?

14 **MR. SPIRO:** No, Your Honor. Thank you.

15 **THE COURT:** Mr. Alexander, any questions?

16 **MR. ALEXANDER:** No questions, Your Honor.

17 **THE COURT:** Okay. Thank you very much.

18 **PROSPECTIVE JUROR 25:** Thank you.

19 (Pause in proceedings.)

20 **THE COURT:** Number 27, I think is next.

21 **PROSPECTIVE JUROR 27:** Hello.

22 **THE COURT:** Hello. Good afternoon -- good morning
23 still. Tell me what you do.

24 **PROSPECTIVE JUROR 27:** I'm an engineer at a materials
25 company.

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1 **THE COURT:** And what does that mean that you do?

2 **PROSPECTIVE JUROR 27:** I was a quality engineer on a
3 manufacturing floor. We made medical devices for endovascular
4 aneurysm repair.

5 **THE COURT:** And how long have you been doing that?

6 **PROSPECTIVE JUROR 27:** 13 years.

7 **THE COURT:** And are you enjoying it?

8 **PROSPECTIVE JUROR 27:** Yeah. It's a great company.

9 **THE COURT:** Okay. You had indicated that you've
10 heard -- you haven't heard great things about working at Tesla.
11 Who have you heard that from?

12 **PROSPECTIVE JUROR 27:** So I work in a manufacturing
13 environment, and just other people who are considering other
14 companies to work for, the general impression is Tesla has a
15 high-stress working environment which is not something I'd be
16 interested in working in.

17 **THE COURT:** Have you talked with anybody at Tesla
18 specifically who shared that opinion with you?

19 **PROSPECTIVE JUROR 27:**

20 **THE COURT:** Or just reputation?

21 **PROSPECTIVE JUROR 27:** Just by reputation mostly. I
22 haven't had longer detailed conversations about working at
23 Tesla.

24 **THE COURT:** Okay. So the -- would -- this case is
25 about Mr. Diaz's experience at Tesla several years ago.

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1 Would you be able to put the reputation that you've heard
2 about -- about from Tesla aside and treat both Tesla and
3 Mr. Diaz equally, fairly?

4 **PROSPECTIVE JUROR 27:** Yes.

5 **THE COURT:** Okay. Is there -- you've indicated
6 that -- have you known anybody who worked on the -- at Tesla?

7 **PROSPECTIVE JUROR 27:** Yes. After he left the company
8 I worked for, he went to go work -- he left our company to go
9 work at Tesla. But maybe -- mostly stayed in touch through
10 other employees or just following him on social media. No
11 direct conversations.

12 **THE COURT:** Okay. All right.

13 And you've indicated that there have been times in your
14 life that you've been -- you have been treated differently as a
15 result of your gender. This case does involve discrimination.

16 Do you think that would give Mr. Diaz a leg up over Tesla
17 as you start the case in thinking about what the facts were in
18 what happened to him?

19 **PROSPECTIVE JUROR 27:** No. It would be dependent on
20 the facts of the case.

21 **THE COURT:** You also indicated that you're generally
22 against awarding punitive damages. In this case it has been --
23 this case has had two phases to it. This is the second phase,
24 and it's been determined that Mr. Diaz is entitled to punitive
25 damages. The issue is the amount.

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1 Would you be able to follow the instructions that I give
2 you with respect to that and -- in order to deliver a fair
3 verdict?

4 **PROSPECTIVE JUROR 27:** Yes. I would do whatever you
5 instructed us to do.

6 **THE COURT:** Okay. All right.

7 Mr. Spiro, any questions?

8 **MR. SPIRO:** No questions. Thank you.

9 **THE COURT:** All right. Mr. Alexander?

10 **MR. ALEXANDER:** Thank you, Your Honor.

11 Could you share with us the reasons why you are against
12 punitive damages?

13 **PROSPECTIVE JUROR 27:** I just don't feel like that's
14 how the court system should function that -- I mean, I'm okay
15 with awarding damages for specific causes, but assigning
16 damages to encourage companies not to do things in the future,
17 I think there is other methods to make that happen.

18 **MR. ALEXANDER:** In this case, as the Court has
19 indicated, one of the jobs of the jurors will be determining
20 punitive damages for a company that is worth several billion
21 dollars.

22 Under those circumstances, would your personal beliefs
23 prevent you from awarding a large -- a large amount of punitive
24 damages?

25 **PROSPECTIVE JUROR 27:** It would impact my decision,

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1 yes.

2 **MR. ALEXANDER:** So when you say it would impact your
3 decision, do you think it would cause you to award less than
4 you otherwise would?

5 **PROSPECTIVE JUROR 27:** Correct.

6 **MR. ALEXANDER:** So in that sense, you would be, I'm
7 going to say, biased towards Tesla in the sense that you would
8 favor giving less punitive damages than you otherwise would?
9 Based on your personal beliefs for punitive damages.

10 **MR. SPIRO:** I'm going to object or ask for follow-up
11 on this.

12 **THE COURT:** You can ask for follow-up. Go ahead.

13 **PROSPECTIVE JUROR 27:** I think I can follow whatever
14 instruction the judge gave and follow those instructions as
15 given in spite of my personal beliefs.

16 **MR. ALEXANDER:** So you could follow the Court's
17 instructions. But with regard to figuring out a number to
18 award against a company that had billions, it would affect you
19 in terms of thinking that it should be less because of your
20 personal beliefs; is that correct?

21 **PROSPECTIVE JUROR 27:** Likely, yes.

22 **MR. ALEXANDER:** Likely yes. Thank you very much,
23 Your Honor.

24 **THE COURT:** Okay. Mr. Spiro.

25 **MR. SPIRO:** I don't know -- good morning. How are

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1 you?

2 So everybody who comes in here has personal feelings;
3 right? The question now is bias, basically; right? Are you
4 unable to follow the Court's instructions because you have a
5 feeling so strong about one side or another?

6 So that's the question before you, but I hear you saying
7 you can follow the judge's instructions.

8 **PROSPECTIVE JUROR 27:** I can follow the judge's
9 instructions.

10 **MR. SPIRO:** And award a damages that you think is fair
11 like anybody else who has opinions about things?

12 **PROSPECTIVE JUROR 27:** Depending -- I don't know what
13 those instructions are right now, but yes.

14 **MR. SPIRO:** Okay. Nothing further.

15 **THE COURT:** The instructions will be that you award an
16 amount that is fair and reasonable in light of issues that I
17 will lay out in the instruction.

18 **PROSPECTIVE JUROR 27:** Sounds good.

19 **THE COURT:** Okay. All right. Thank you.

20 (Pause in proceedings.)

21 **PROSPECTIVE JUROR 29:** Good morning, Your Honor.

22 **THE COURT:** Good morning. How are you?

23 **PROSPECTIVE JUROR 29:** I'm doing well.

24 **THE COURT:** Good. Thank you for being here. So you
25 are an optician. How long have you been doing that work?

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1 **PROSPECTIVE JUROR 29:** I have been doing it for
2 18 years and six months at my current job.

3 **THE COURT:** And do you enjoy it? I appreciate you.

4 **PROSPECTIVE JUROR 29:** I do. It's -- it's nice to
5 provide a service to the public that actually helps.

6 **THE COURT:** It certainly does. The -- your -- your
7 views regarding Mr. Musk are the ones that I wanted to ask you
8 about.

9 You have strong views about the way he is using Twitter.
10 He is not involved in this case.

11 **PROSPECTIVE JUROR 29:** Of course.

12 **THE COURT:** And would -- would your strong feelings
13 about him, though, bleed over into your evaluation of the
14 evidence that's presented here so that Mr. Diaz would have some
15 sort of an advantage just at the beginning in the way that you
16 were evaluating the evidence?

17 **PROSPECTIVE JUROR 29:** Probably. And also I am aware
18 of allegations of both racial and gender discrimination at
19 specifically Tesla, so I'm not sure that I could be neutral.

20 **THE COURT:** Okay. And tell me about -- tell me what
21 you have learned about that.

22 **PROSPECTIVE JUROR 29:** I've just -- I have seen things
23 on Twitter that have led to reading articles and things like
24 that. I'm not -- I don't remember any specifics at this point,
25 but I'm aware of the allegations.

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1 **THE COURT:** Okay. The other thing that you had
2 mentioned was that you think that Tesla has a terrible product.
3 And --

4 **PROSPECTIVE JUROR 29:** I do.

5 **THE COURT:** And so just starting off, do you believe
6 that you could set -- set aside the things that you've read
7 about, your feelings about Mr. Musk, and your feelings about
8 Tesla's product, do you think you could set that aside and
9 serve as a fair and impartial juror?

10 **PROSPECTIVE JUROR 29:** The Tesla part I most likely
11 could, but because of the specific nature of this case, I don't
12 think I can be impartial.

13 **THE COURT:** Okay. All right.

14 Mr. Alexander, do you have any questions?

15 **MR. ALEXANDER:** No, Your Honor.

16 **THE COURT:** Okay. Thank you very much. If you
17 would -- Ms. Davis, I think we ought to tell -- we still have a
18 number of people to go. I'm suspecting that we need to take a
19 short break anyway. So could you let everybody know that --
20 who has come in that we'll be back at 12:30 instead of 11:30.
21 And for the people who have not come in yet, we are going to
22 take a 15-minute break and start with Number 30 at 20 of 12:00.
23 Okay. Is that clear?

24 **THE CLERK:** Yes.

25 **THE COURT:** Okay. Thank you very much. So please

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1 come back in --

2 **PROSPECTIVE JUROR 29:** 12:30.

3 **THE COURT:** -- at 12:30.

4 **PROSPECTIVE JUROR 29:** Okay. Thank you.

5 (Recess taken at 11:25 a.m.)

6 (Proceedings resumed at 11:42 a.m.)

7 **THE COURT:** Be seated, everybody, please.

8 Number 30, please.

9 **THE CLERK:** All right.

10 (Pause in proceedings.)

11 **MR. ORGAN:** Your Honor, which one did you say is next?

12 **THE COURT:** I'm sorry?

13 **MR. ALEXANDER:** Who's next?

14 **THE COURT:** Number 30.

15 **MR. ORGAN:** Thank you.

16 (Pause in proceedings.)

17 **THE COURT:** Good morning.

18 **PROSPECTIVE JUROR 30:** Good morning --

19 **THE COURT:** How are you?

20 **PROSPECTIVE JUROR 30:** -- Judge Orrick. How are you.

21 **THE COURT:** I'm very well. Thank you.

22 So how long have you been a dental hygienist?

23 **PROSPECTIVE JUROR 30:** 22 years.

24 **THE COURT:** Wow. Well, thank you. I'm -- I'm in debt
25 to you and everybody who works as you do.

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1 I wanted to ask you a few questions. One was you were --
2 you mentioned that you think that Mr. Musk is a genius
3 businessman but gets his hand on too many products.

4 The -- this case does not involve Mr. Musk. He's not a
5 witness. He's not -- he's not in the case. Would you be able
6 to separate your views about him from your views of Tesla and
7 what it's -- it did in this case so that at the beginning of
8 the case, both Tesla and Mr. Diaz start at an absolutely equal
9 level?

10 **PROSPECTIVE JUROR 30:** Good to know that I'm not going
11 to see him in person, not that he's my hero. I don't know much
12 about Tesla or the company, so I won't be too much bias.

13 **THE COURT:** Okay. So as far as you know from what
14 you've heard so far, both Mr. Diaz and Tesla would start at an
15 absolutely even place and then you would evaluate the evidence
16 and be able to reach a determination with your fellow jurors?

17 **PROSPECTIVE JUROR 30:** Yes. But my main concern at
18 the beginning when I file my questionnaire was my health --

19 **THE COURT:** Yes.

20 **PROSPECTIVE JUROR 30:** -- my physical condition. But
21 after, like, today, I heard about the date for the trial and
22 that I happen to have a vacation with my son already scheduled
23 this Thursday and Friday. And he's my only son, I'm a single
24 mom, and he has one week spring break this week, and that's why
25 I scheduled that mini trip, and I wasn't thinking about coming

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1 in short notice.

2 **THE COURT:** And so -- and where are you going to go?

3 **PROSPECTIVE JUROR 30:** To Reno. It's an Amtrak train
4 scenic ride. It will be our first train ride ever. He's 16
5 now. It's my first train ride with him. So we kind of excited
6 about that trip, but it's a bummer.

7 **THE COURT:** Well, so, tell me -- tell me about your
8 health issues, also.

9 **PROSPECTIVE JUROR 30:** I was fighting with cancer
10 since 2021 and go through all kind of treatment, everything
11 that I have to go through. At one point I was so scared like I
12 won't see my son's graduation from high school. So I'm glad
13 I'm still alive.

14 **THE COURT:** And -- me too, and I'm glad you're in
15 remission, but you -- and you indicated that you would need to
16 take frequent breaks. I described what the schedule is for the
17 day. Is that -- would that work for you, every hour and a half
18 taking a break?

19 **PROSPECTIVE JUROR 30:** I hope that should be okay but
20 just my main concern now is that I have this trip. It is
21 nonrefundable and -- oh, my gosh, what should I do?

22 **THE COURT:** I heard you loud and clear on that. I
23 appreciate that.

24 **PROSPECTIVE JUROR 30:** So I don't want to be selected,
25 I know.

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1 **THE COURT:** Okay. All right. Any questions,
2 Mr. Spiro?

3 **MR. SPIRO:** No, Your Honor.

4 **THE COURT:** Mr. Alexander?

5 **MR. ALEXANDER:** No, Your Honor.

6 **THE COURT:** Thank you very much. And please come back
7 at 12:30.

8 (Pause in proceedings.)

9 **THE COURT:** Good morning. You are Juror Number 32; is
10 that right?

11 **PROSPECTIVE JUROR 32:** Yes.

12 **THE COURT:** So tell me, you're an insurance manager,
13 what does that mean?

14 **PROSPECTIVE JUROR 32:** So I'm an insurance agent. I
15 work at, like, a small family-owned insurance agency, and I run
16 it and sell insurance, car insurance, homeowners, renters.

17 **THE COURT:** How long have you been doing that?

18 **PROSPECTIVE JUROR 32:** Ten years, yeah, in May.

19 **THE COURT:** That's great. Are you enjoying it?

20 **PROSPECTIVE JUROR 32:** Yeah. I stopped doing it for
21 like a year, but I'm back at it, so, yeah.

22 **THE COURT:** So, the -- you indicated that you have
23 strong feelings about Mr. Musk and that you don't agree with
24 some of his views.

25 The -- you've heard me say that he is not involved in this

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1 case. He's not a witness. He's not involved in any way in the
2 case. Do you think that your strong feelings about him,
3 though, would bleed over to your views about Tesla so that
4 Mr. Diaz would have an advantage at the beginning of the trial
5 compared to Tesla or would you be able to start everybody at
6 the same place and just evaluate the evidence fairly as it
7 comes in?

8 **PROSPECTIVE JUROR 32:** Somewhat, but not really. I
9 mean, I --

10 **THE COURT:** Tell me why.

11 **PROSPECTIVE JUROR 32:** Just because like the car
12 problems they've had previously, Tesla, it doesn't really speak
13 highly of them. Not that it has to do with discrimination,
14 being Hispanic. I mean I'm not really -- I don't really agree
15 more now with his views.

16 **THE COURT:** Okay. So --

17 **PROSPECTIVE JUROR 32:** And some of the stuff he does,
18 I don't know.

19 **THE COURT:** Well, so in this case, the -- it has been
20 determined that in this instance, Tesla discriminated against
21 Mr. Diaz and the issue is going to be damages, what is the fair
22 and reasonable amount of damages that should be awarded to him.

23 Do you think that given everything else that you just
24 described, when you're looking at that issue, he's already
25 going to start with a little bit of an advantage to Tesla?

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1 **PROSPECTIVE JUROR 32:** I believe so, yes.

2 **THE COURT:** Okay. All right. And you also wrote that
3 you didn't feel that you were the correct candidate for this
4 case. Tell me -- was that the reason or was there another?

5 **PROSPECTIVE JUROR 32:** I just have Catholic views, and
6 I don't really -- I'm -- yeah, I don't really feel like this is
7 a fair case, to be honest, and I don't really feel like the
8 appropriate person to be a juror.

9 **THE COURT:** Okay.

10 **PROSPECTIVE JUROR 32:** Yeah.

11 **THE COURT:** All right. Mr. Spiro, any questions?

12 **MR. SPIRO:** No, Your Honor. Thank you.

13 **THE COURT:** Mr. Alexander?

14 **MR. ALEXANDER:** No questions.

15 **THE COURT:** Okay. Thank you very much. Please come
16 back at 12:30. Thank you.

17 **THE CLERK:** 37 is next.

18 **THE COURT:** 37 is next?

19 (Pause in proceedings.)

20 **THE COURT:** Good morning.

21 **PROSPECTIVE JUROR 37:** Good morning.

22 **THE COURT:** So you are a scientist for the State of
23 California.

24 **PROSPECTIVE JUROR 37:** Yes.

25 **THE COURT:** I want to thank you for that, but tell me

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1 what you do.

2 **PROSPECTIVE JUROR 37:** I am a virologist at the State
3 virology laboratory. We do all kinds of diagnostic testing and
4 surveillance work.

5 **THE COURT:** So now I really want to thank you. How
6 long have you been working for the State?

7 **PROSPECTIVE JUROR 37:** As a State employee, 15 years.
8 But at the State for 22ish, 24.

9 **THE COURT:** So the -- you indicated very strong views
10 about Mr. Musk, and I've explained that Mr. Musk is not
11 involved in the case in any way whatsoever.

12 Given the strength of your views, would that carry over to
13 the way that you think about Tesla as a company so that you
14 wouldn't be able to be a fair and impartial juror?

15 **PROSPECTIVE JUROR 37:** Since he's not the entire
16 company, I think that that wouldn't have any bearing on my
17 ability to be fair.

18 **THE COURT:** Okay. And have you heard anything -- do
19 you think you would be able to be a fair and impartial juror in
20 this case?

21 **PROSPECTIVE JUROR 37:** I do think I would be able to,
22 yes.

23 **THE COURT:** Mr. Spiro, any questions?

24 **MR. SPIRO:** Yes, just very briefly. And thank you.

25 You know, when we ask jurors to come into jury service, in

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1 traditional cases, they come in and they have, you know,
2 literally zero feelings, it's two nameless people, right, that
3 they've never heard of and they're there to decide -- like, you
4 know, you think on high on the scales of justice, just right or
5 wrong; right?

6 Here, you obviously have a very strong feeling about the
7 person who leads one of the companies; right?

8 **PROSPECTIVE JUROR 37:** Right.

9 **MR. SPIRO:** So it's incumbent upon me, and I have to
10 follow up with you and sort of ask you if you hear them make
11 arguments saying, you know, Tesla's an improper company, the
12 leadership starts at the top, they need to be punished, they
13 need to be stopped, I mean -- I'm sort of asking you to do some
14 soul searching because you're obviously a very accomplished
15 smart person, can you be sure that that's not going to resonate
16 with you differently from the start than it would if you had no
17 feelings at all? And that's really my question.

18 **PROSPECTIVE JUROR 37:** Can you -- I'm trying to
19 think -- make sure I answer the question you just asked. So
20 the fact that he leads the company, is that going to sway me;
21 is that what -- basically what you're asking?

22 **MR. SPIRO:** Well, him leading the company would cause
23 you, given your views on him, to be more likely to be listening
24 intently to an argument that you see the company and its
25 leadership and this is problem all the way up, right, this

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1 company needs to be punished, this company has issues, it
2 starts at the top?

3 **PROSPECTIVE JUROR 37:** Oh, no, I don't see anything
4 like that. From what my understanding of the case is, is that
5 that would have no bearing on my ability to fairly think about
6 this case.

7 **MR. SPIRO:** Right. Because it is the company; right?
8 You're going to hear about an issue of discrimination, but it's
9 the company that is on trial, right, so they're going to --
10 their argument to you is going to be this company has issues,
11 this company needs to be punished; right? So I don't want you
12 to -- I want to make sure --

13 **PROSPECTIVE JUROR 37:** No. I -- that's not an issue
14 for me. I mean, no, my feelings about that -- about him as a
15 person is not going to affect my ability to think about the
16 case.

17 **MR. SPIRO:** Thank you so much.

18 **THE COURT:** Mr. Alexander?

19 **MR. ALEXANDER:** Nothing.

20 **THE COURT:** Okay. Thank you very much. Please come
21 back at 12:30.

22 (Pause in proceedings.)

23 **THE COURT:** Good morning.

24 And this is Number 40.

25 **PROSPECTIVE JUROR 40:** Good morning.

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1 **THE COURT:** So you're retired at this point?

2 **PROSPECTIVE JUROR 40:** I am.

3 **THE COURT:** And tell me how you're spending your days.

4 **PROSPECTIVE JUROR 40:** Oh, I -- I'm a quilter, and I
5 belong to a couple clubs, and I do some volunteer work at
6 church.

7 **THE COURT:** Oh, that's great. And before you were
8 working as an accountant with Chevron. How long were you
9 there?

10 **PROSPECTIVE JUROR 37:** 25 years.

11 **THE COURT:** And are you -- do you wish you were back,
12 or are you glad that you're quilting and doing volunteer work?

13 **PROSPECTIVE JUROR 25:** I have been retired now for
14 about 17 years. I went out on a medical because of my back.
15 So I would have liked to have gone back but at the time, I was
16 waiting for artificial disks to be approved and didn't have it
17 in time on that, so it just worked out that way. I would have
18 liked to have worked longer but at this point, I'm very happy
19 not to commute.

20 **THE COURT:** Uh-huh, yeah. And I wanted to ask you
21 about your back. The schedule that -- there are two things.
22 One is that we have the schedule of taking a break every hour
23 and a half. The other thing is that any time you need to stand
24 up in the jury box, it's fine.

25 Are those -- are those accommodations sufficient for you

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1 to -- to serve on a jury?

2 **PROSPECTIVE JUROR 37:** Actually, I was looking at the
3 chairs in the jury box because the pews, as I call them, are
4 very uncomfortable.

5 **THE COURT:** Very uncomfortable.

6 **PROSPECTIVE JUROR 37:** And so that's been difficult.
7 I can't stand a long time and I can't sit a long time, but
8 those chairs will accommodate me, and I should be fine.

9 **THE COURT:** Okay. All right.

10 **PROSPECTIVE JUROR 37:** And the hours are good, too.
11 It's not -- from 8:30 to 1:30 for court days? So other than
12 commuting.

13 **THE COURT:** Yes, the commute, but --

14 **PROSPECTIVE JUROR 37:** Yeah.

15 **THE COURT:** -- you can do it early.

16 **PROSPECTIVE JUROR 40:** I can make it.

17 **THE COURT:** The -- you indicated some negative views
18 about Elon Musk, whose opinions you think haven't been good for
19 the country.

20 The -- I've explained he is not involved --

21 **PROSPECTIVE JUROR 40:** I understand that.

22 **THE COURT:** -- in the case. And -- but would
23 anything -- would your feelings about him transfer over to
24 Tesla so that you wouldn't be able to give them a fair trial as
25 well as Mr. Diaz?

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1 **PROSPECTIVE JUROR 40:** No.

2 **THE COURT:** Okay. And the fact that you don't like
3 the car.

4 **PROSPECTIVE JUROR 40:** Oh.

5 **THE COURT:** That Tesla produces.
6 Some people love them. Some people don't.

7 **PROSPECTIVE JUROR 40:** It's more the injuries that I
8 see, I guess, and the fires and so forth and the damages it
9 causes to families that I've really noticed. That's probably
10 the only exception. I mean, I don't know much about them. I
11 haven't shopped for one. So, just some of the accidents and so
12 forth, mostly on the automated driving systems I think.

13 **THE COURT:** Uh-huh. So would that -- so this case is
14 about what happened in the workplace. It's not about the
15 product.

16 Would anything about the product, again, lead you at the
17 beginning to start this case preferring in any small way
18 Mr. Diaz to Tesla because of those things?

19 **PROSPECTIVE JUROR 40:** No. I see it as totally
20 different subject matters. It's not the same at all to me.

21 **THE COURT:** Okay. All right.

22 Mr. Spiro, any questions?

23 **MR. SPIRO:** Yes. Just two brief questions. One is
24 that you said that you had a family member's husband that
25 worked as a contractor for Tesla.

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1 Did you learn anything through that that affects this?

2 **PROSPECTIVE JUROR 40:** No.

3 **MR. SPIRO:** Okay. I see you indicating no.

4 **PROSPECTIVE JUROR 40:** No.

5 **MR. SPIRO:** And then the second question is going back
6 to the beginning, which is, you know, obviously you have strong
7 feelings about Mr. Musk, and I respect and understand the
8 feelings.

9 The question is: They're going to be arguing in essence
10 that you may hear arguments, you know. This is a bad company,
11 the company needs to be punished, a company that needs to
12 suffer so that it changes; right? That's going to be some of
13 the kinds of arguments you hear.

14 So the question is: If you go into this case not having a
15 strong, negative feeling about the leadership of the company,
16 do you think you are going to be more likely to be receptive to
17 that kind of an argument because you have some of those
18 inherent feelings?

19 That's the real question. Did you follow?

20 **PROSPECTIVE JUROR 40:** I think I follow you.

21 It would be based on the information that I would receive
22 from whatever arguments and documentation and so forth that you
23 provide that I would be judging it on, not preconceived
24 managerial and CEO type of judgments that I have opinions
25 about.

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1 So I think it would be based on your arguments.

2 **MR. SPIRO:** Okay.

3 **PROSPECTIVE JUROR 40:** Best I understand what you're
4 asking me.

5 **MR. SPIRO:** Yeah. That's what I'm asking.

6 I'm asking: Do you think that it's going to bleed into
7 this? When you hear an argument that triggers that thought,
8 that, you know, the leadership of this company is rotten and
9 they need to be punished.

10 **PROSPECTIVE JUROR 40:** No, no.

11 **MR. SPIRO:** Thank you very much.

12 **PROSPECTIVE JUROR 40:** You're welcome.

13 **THE COURT:** Mr. Alexander, any questions?

14 **MR. ALEXANDER:** No.

15 **THE COURT:** All right. Thank you. Come back at
16 12:30, please.

17 (Pause in proceedings.)

18 **PROSPECTIVE JUROR 41:** Good afternoon.

19 **THE COURT:** Good afternoon. This is Juror Number 41;
20 is that right?

21 **PROSPECTIVE JUROR 41:** Yes.

22 **THE COURT:** Good. So what is DNS Dhami Corporation?

23 **PROSPECTIVE JUROR 41:** It's a private corporation.
24 Own a liquor license under it.

25 **THE COURT:** So is that -- you would be -- you manage a

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1 liquor store, basically?

2 **PROSPECTIVE JUROR 41:** Yes.

3 **THE COURT:** And how long have you been doing that?

4 **PROSPECTIVE JUROR 41:** 17 years.

5 **THE COURT:** And I will thank you for your service.

6 I'm sometimes a consumer.

7 (Laughter)

8 **THE COURT:** The -- the -- you indicated that you have
9 strong feelings about Mr. Musk, that he is an intelligent guy
10 but behaves irrationally and says stupid things. Probably
11 impulsive.

12 **PROSPECTIVE JUROR 41:** That's what I gather from the
13 media, sir.

14 **THE COURT:** Well, you know that -- you know from being
15 here that he's got nothing to do with this case. He's not a
16 witness. He's not going to be involved in the case.

17 Is there anything about that that you think would impact
18 your ability to be a fair and impartial juror?

19 **PROSPECTIVE JUROR 41:** No, sir.

20 **THE COURT:** Now, you happen to like Tesla products.
21 You feel that they are game-changing products.

22 Would -- does your feeling about those products and Tesla,
23 would that make Tesla start with an advantage for you when you
24 are evaluating the evidence in the case? Because you're -- you
25 like the products, you -- would your feelings about the company

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1 give them a -- some slight advantage over Mr. Diaz just at the
2 start of the case?

3 **PROSPECTIVE JUROR 41:** No, sir. Just because like you
4 mentioned in the briefing that you will be guiding us and you
5 will be telling the legal points, and both sides are going to
6 put up their points, what is involved in this, and it's just
7 going to be based on that.

8 **THE COURT:** So you can -- you're confident you could
9 serve as a fair and impartial juror?

10 **PROSPECTIVE JUROR 41:** Yes.

11 **THE COURT:** The one other thing that you mentioned was
12 your dog. And that you've heard what the schedule is?

13 **PROSPECTIVE JUROR 41:** I heard that, so maybe I will
14 be able to manage it. It's just for five days. Like today, my
15 next-door neighbor, I handed over the house keys to them. And
16 my wife is coming back on the 5th, so.

17 **THE COURT:** Okay. Great.

18 Mr. Spiro, any questions?

19 **MR. SPIRO:** No, Your Honor.

20 **THE COURT:** Mr. Alexander?

21 **MR. ALEXANDER:** Yes, please.

22 In your questionnaire, you said that damages should not be
23 ridiculously excessive.

24 What did you mean by that?

25 **PROSPECTIVE JUROR 41:** Like what you read in the

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1 media, like layman. I've never been involved in anything like
2 this, but when you read in the media so many hundreds of
3 millions, you know, have been given as damages. So to a
4 layman, you think that these are exorbitant figures. How can
5 something be like 300 million or a billion dollars or whatever.
6 That's what came to my mind, and I answered it.

7 **MR. ALEXANDER:** Well, in this case, the Court will
8 give an instruction that the jury is supposed to determine what
9 amount of general damages and punitive damages should be
10 awarded. And Tesla is --

11 **PROSPECTIVE JUROR 41:** The judge made it clear, sir.
12 I heard that.

13 **MR. ALEXANDER:** And so given that, we will be asking
14 for millions of dollars.

15 Would you have difficulty awarding millions of dollars
16 against a company regardless of what the judge's instructions
17 were?

18 **PROSPECTIVE JUROR 41:** No. It would be based on like
19 what the judge guides us.

20 **MR. ALEXANDER:** So you would be able to award millions
21 of dollars?

22 **PROSPECTIVE JUROR 41:** Uh-huh.

23 **MR. ALEXANDER:** Yes?

24 **PROSPECTIVE JUROR 41:** Yes.

25 **MR. ALEXANDER:** Thank you very much.

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1 **THE COURT:** Mr. Spiro?

2 **MR. SPIRO:** I understood you to mean you would follow
3 the judge's instructions, correct?

4 **PROSPECTIVE JUROR 41:** Sorry?

5 **MR. SPIRO:** You will follow the judge's instructions?

6 **PROSPECTIVE JUROR 41:** Yes. The judge guides us of
7 what are the legal points and this much is allowable in this
8 case and this much is allowable for this and this is how much
9 can be allotted. So based on that, it will be at that moment
10 because I just give a true answer how I felt because what I see
11 in the media.

12 **MR. SPIRO:** Thank you very much.

13 **PROSPECTIVE JUROR 41:** You're welcome.

14 **THE COURT:** All right. Thank you. Come back at
15 12:30, please.

16 **PROSPECTIVE JUROR 41:** Thank you.

17 (Pause in proceedings.)

18 **THE COURT:** Good afternoon.

19 **PROSPECTIVE JUROR 42:** Good afternoon.

20 **THE COURT:** So what do you teach?

21 **PROSPECTIVE JUROR 42:** I teach Algebra, introduction
22 and intermediate Algebra for the first two years of college.

23 **THE COURT:** And how long have you been doing that?

24 **PROSPECTIVE JUROR 42:** Seven years.

25 **THE COURT:** That's great. Do you enjoy it?

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1 **PROSPECTIVE JUROR 42:** Oh, yeah. It's great fun.

2 **THE COURT:** That's terrific. And then what are Bay
3 Area Stretcher Bars?

4 **PROSPECTIVE JUROR 42:** So we build custom-built
5 stretcher bars, which are the frames that stretch canvas for
6 painters.

7 **THE COURT:** Oh.

8 **PROSPECTIVE JUROR 42:** We also make panels, so it's
9 kind of a -- a very niche industry.

10 **THE COURT:** Uh-huh. That's great.

11 So I wanted to -- you had mentioned that you have strong
12 views about Mr. Musk, that he's likely brilliant but also
13 grossly misuses his ego, influence, wealth, and power.

14 And I wanted to -- I said at the beginning he's not
15 involved in this case. He is not a witness or anything like
16 that.

17 But would your feelings about him bleed over into your
18 feelings about Tesla so that it would impact your view of the
19 evidence as it comes in?

20 **PROSPECTIVE JUROR 42:** No.

21 **THE COURT:** Okay. All right.

22 Is there -- have you heard anything -- is there any reason
23 why you couldn't serve as a fair and impartial juror?

24 **PROSPECTIVE JUROR 42:** Not that I'm aware of.

25 **THE COURT:** All right. Any questions?

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1 **MR. SPIRO:** Yes. Just very briefly on another topic,
2 and I apologize, but I have to ask you a question. And I will
3 sort of keep it at the surface.

4 But I know you're a Plaintiff in a case?

5 **PROSPECTIVE JUROR 42:** Uh-huh.

6 **MR. SPIRO:** I don't know the nature, and I don't want
7 to pry the nature of it, per se, but is that something where
8 you responded to sort of an advertisement and you're in the
9 case, or is that something where you're actively involved as
10 the Plaintiff in the case?

11 **PROSPECTIVE JUROR 42:** No. It was a case that was
12 settled, and it was against drug manufacturers. It was DES and
13 my wife, her -- her uterus was affected by her mother taking
14 DES, so it affected the childbirth.

15 **MR. SPIRO:** I'm sorry to hear that.

16 I -- I ask because, you know, that's obviously a very
17 upsetting thing, and I'm sorry that I even have to ask you
18 questions about this.

19 Some people that are Plaintiffs, especially in emotional
20 cases -- and that's understandably one -- start in a case
21 having been through something like with a leaning toward the
22 Plaintiff's side and think it's natural. It's human instinct.

23 So, I have to ask you, you know: Do you think that there
24 is a chance that that impacts your ability as you start here
25 today?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR 42:** It's a really good question. I
2 hadn't really given it much thought in the last -- well, since
3 my wife's deceased. But it was certainly a very emotional
4 time, which lasted about ten years.

5 So, to answer the question, I would think not. But, you
6 know, it's -- I don't know how else to answer that.

7 **MR. SPIRO:** Yeah. Well, this is -- this is the part
8 of the process that's tricky, right, because it's not like
9 Algebra. I have to ask you, and you're a very smart,
10 experienced guy, and it struck me that what you went through
11 was a very, very hard time. I didn't know it even lasted a
12 decade.

13 But given the intensity of that experience as a Plaintiff
14 in a case like that, it's hard for me to imagine that at some
15 level that doesn't stay with you and at some level does not
16 influence the way that you enter a case when you look at a
17 Plaintiff than when you look at a corporation.

18 **PROSPECTIVE JUROR 42:** You could be very right. I
19 wouldn't disagree with you.

20 **MR. SPIRO:** Okay.

21 **PROSPECTIVE JUROR 42:** I would like to think that
22 that's not the case, but to --

23 **MR. SPIRO:** Right. So -- and why I ask is, again, you
24 seem like a fair person. There may be a case that's a better
25 fit for you, but a case in which there is a Plaintiff against a

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1 corporation, given that experience, is probably not the right
2 case for you?

3 **PROSPECTIVE JUROR 42:** Very likely.

4 **MR. SPIRO:** All right. Thank you.

5 **PROSPECTIVE JUROR 42:** Thank you.

6 **THE COURT:** Mr. Alexander?

7 Mr. Alexander might have some questions for you.

8 **MR. ALEXANDER:** With regard to the circumstances of
9 your wife -- and I apologize for that -- you understand that is
10 a completely different company than this company; correct?

11 **PROSPECTIVE JUROR 42:** Absolutely.

12 **MR. ALEXANDER:** In this case there will not be -- you
13 will not be determining liability, just damages, the amount of
14 damages that would be fair for the circumstances of this case.

15 Do you believe that you could divorce your thoughts
16 regarding what happened to your wife or any other lawsuits from
17 this lawsuit and the circumstances of this lawsuit?

18 **PROSPECTIVE JUROR 42:** I believe so.

19 **MR. ALEXANDER:** Okay. And when you say "I believe
20 so," you would make a conscious effort to do that; correct?

21 **PROSPECTIVE JUROR 42:** Most definitely.

22 **MR. ALEXANDER:** So the Court will give you
23 instructions as to what your obligation is. And would you be
24 willing and able to follow the Court's instructions in that
25 regard.

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1 **PROSPECTIVE JUROR 42:** Yeah, I would follow the
2 directions.

3 **MR. ALEXANDER:** And up until -- up until the moment
4 there was some questioning about your wife, there had been no
5 thought in your mind that you would have any ability to be fair
6 and impartial to both sides in this case; correct?

7 **PROSPECTIVE JUROR 42:** No. There wouldn't have been
8 any circumstances that the issue would never have come up.

9 **MR. ALEXANDER:** And now, now that you understand the
10 Court will be giving you instructions, and is there anything
11 that has changed? You still believe you can be fair and
12 impartial?

13 **PROSPECTIVE JUROR 42:** Yes. I believe so.

14 **MR. ALEXANDER:** Great. Thank you very much.

15 **MR. SPIRO:** Just a brief follow-up.

16 **THE COURT:** No more follow-up. Thank you very much.

17 **PROSPECTIVE JUROR 42:** Thank you.

18 (The court reporter asked for clarification.)

19 **THE COURT:** That was Number 42.

20 Ms. Davis, I think we are onto 49.

21 (Pause in proceedings.)

22 **THE COURT:** Good afternoon.

23 **PROSPECTIVE JUROR 49:** Good afternoon.

24 **THE COURT:** And so you are an IT manager?

25 **PROSPECTIVE JUROR 49:** Yes.

JURY VOIR DIRE

1 **THE COURT:** With Hitachi. Tell me what that means.
2 What do you do every day?

3 **PROSPECTIVE JUROR 49:** So I'm senior director at --
4 working for a Japanese company, and I manage the infrastructure
5 enterprise cloud and systems engineering.

6 **THE COURT:** How long have you been doing that?

7 **PROSPECTIVE JUROR 49:** Ten-plus years.

8 **THE COURT:** Do you enjoy it?

9 **PROSPECTIVE JUROR 49:** Yes.

10 **THE COURT:** The -- you indicated with respect to
11 Mr. Musk that you see him as a visionary.

12 **PROSPECTIVE JUROR 49:** Yes.

13 **THE COURT:** And I wanted to ask you whether -- because
14 you have such a strong belief in him, whether that would impact
15 how you view Tesla itself, which you also like because you like
16 green products, whether that would impact your ability here to
17 judge the evidence equally and fairly involving the workplace
18 discrimination case that Mr. Diaz has brought?

19 **PROSPECTIVE JUROR 49:** Yes. I should be able to make
20 that judgment.

21 **THE COURT:** You would be able to be fair and
22 impartial?

23 **PROSPECTIVE JUROR 49:** Yes.

24 **THE COURT:** You would not give Tesla just starting off
25 just a slight advantage just because you like Mr. Musk?

JURY VOIR DIRE

1 **PROSPECTIVE JUROR 49:** No, no. No, it's just because,
2 you know, I strongly believe in green energy and
3 sustainability.

4 **THE COURT:** Okay. Is there any reason that you've
5 heard that you don't think -- let me ask a better question. Do
6 you think you would be able to be a fair and impartial juror in
7 this case?

8 **PROSPECTIVE JUROR 49:** Yes.

9 **THE COURT:** Mr. Alexander, any questions?

10 **MR. ALEXANDER:** Yes.

11 In this case, as a juror, you would be asked to award
12 millions of dollars of damages against a company whose
13 leader's -- you believe is a visionary.

14 Would you have any difficulty doing that?

15 **PROSPECTIVE JUROR 49:** No.

16 **MR. ALEXANDER:** So you could put that out of mind --

17 **PROSPECTIVE JUROR 49:** Yes.

18 **MR. ALEXANDER:** -- and award millions of dollars?

19 **PROSPECTIVE JUROR 49:** Yes.

20 **MR. ALEXANDER:** Excellent. Thank you.

21 **THE COURT:** Mr. Spiro, any questions?

22 **MR. SPIRO:** No, Your Honor. Thank you.

23 **THE COURT:** Okay. Thank you very much. Come back at
24 12:30, please.

25 **PROSPECTIVE JUROR 49:** I just have one question.

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1 **THE COURT:** Yes.

2 **PROSPECTIVE JUROR 49:** I had oral surgery on last week
3 on Thursday, and I have a follow-up appointment on this
4 Thursday. You know to take out the stitches because they had
5 to, you know, tear my gum to take out the broken tooth.

6 **THE COURT:** What time is the appointment?

7 **PROSPECTIVE JUROR 49:** It's in the afternoon at
8 1:00 o'clock.

9 **THE COURT:** Is there any chance that you would be able
10 to call them up and rearrange the time to have a later time on
11 Thursday?

12 **PROSPECTIVE JUROR 49:** If I'm selected, then yes, I
13 will have to call them up.

14 **THE COURT:** If you would do that, that would be great
15 if you are selected.

16 **PROSPECTIVE JUROR 49:** Yes.

17 **THE COURT:** Great. Thank you very much.

18 (Pause in proceedings.)

19 **THE COURT:** Good afternoon. This is Juror Number 50;
20 is that right?

21 **PROSPECTIVE JUROR 50:** Yes.

22 **THE COURT:** Excellent. Okay.

23 So you are getting your Ph.D. at UCSF. Tell me what it's
24 in.

25 **PROSPECTIVE JUROR 50:** It's in biochemistry.

JURY VOIR DIRE

1 **THE COURT:** And what are you doing right now in order
2 to get that doctorate?

3 **PROSPECTIVE JUROR 50:** So right now I have been
4 working on -- so I study a protein complex called the "nuclear
5 lamina" which is a meshwork of proteins that gives the nucleus
6 in cells its structure. So right now I'm working on kind of
7 mutating various amino acids in that protein to see if it can
8 form that meshwork.

9 **THE COURT:** And are you -- is the ultimate result of
10 what you are doing going to come out in some written form or --

11 **PROSPECTIVE JUROR 50:** That's the goal. Yeah,
12 theoretically in hopefully a year or so I will have a
13 manuscript for a paper that will get published somewhere.

14 **THE COURT:** Great. Okay.

15 And as far as the trial schedule, is -- is this going to
16 interrupt anything that you're doing in a significant way or
17 will you be able to work around the schedule?

18 **PROSPECTIVE JUROR 50:** Since the trial seems to be on
19 the scale of days and not weeks or months, I should be able to
20 work around that just fine, especially with the having the
21 afternoons free. Also being done by 1:30 would be fantastic.

22 **THE COURT:** Okay. Great.

23 So let me then go to your view of Mr. Musk, which you have
24 a strong view that is not positive regarding him. And I'm
25 wondering whether that would impact your ability to set -- to

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1 be fair and impartial in a case involving one of his companies?

2 **PROSPECTIVE JUROR 50:** I mean, as I think you said
3 before, the -- the actual trial contents do not involve Elon
4 Musk at all, and so I think I could be -- I would be able to
5 kind of separate that from the trial.

6 **THE COURT:** Okay. And Tesla itself, you also have
7 concerns about its products and the -- and so -- so this -- the
8 issue in this case involves a workplace issue and
9 discrimination, so it doesn't involve the products themselves.

10 But you have strong feelings about both of those things,
11 and I'm -- it's very important that at the beginning of the
12 case you are able to treat Tesla equally and fairly with
13 Mr. Diaz.

14 Would you be able to do that?

15 **PROSPECTIVE JUROR 50:** I think I would be able to. I
16 don't know if I can guarantee anything, but I would do my best
17 to make sure that those feelings are not brought into the
18 trial.

19 **THE COURT:** Okay. Those feelings -- I'm telling
20 you -- they have got nothing to do with the trial. And what
21 is -- what I need to know is that if you were seated on the
22 jury, you would be able to treat Tesla just as you would any
23 human being you didn't know, any company you liked, and then go
24 on from there.

25 Would you be able to do that?

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1 **PROSPECTIVE JUROR 50:** I think I can do that, yes.

2 **THE COURT:** Okay. Mr. Spiro.

3 **MR. SPIRO:** Yes.

4 Good afternoon at this point. So thank you and thank you
5 for your honesty. I have to ask you just sort a follow-up.
6 People say -- we know you have a strong feeling about the
7 leader of the company or the CEO of the company, and you are
8 using the words like "I think," "I hope to be." And so it's
9 sort of incumbent upon me to follow up.

10 What I expect you to hear are arguments that this company
11 is rotten at its core, you know, all the way up to the top,
12 right, and so the question is if you come in with those
13 feelings, and I sense you wavering a little bit on the, I
14 think, issues, you know, can you give an unequivocal assurance?
15 Can you be sure that you don't come into a case with a leaning
16 at all, right, because, you know, then there may be a different
17 case that's the right case for you, and this wouldn't be it.
18 So that's really the ultimate question for you.

19 **PROSPECTIVE JUROR 50:** I can do it. I'm a -- I'm a
20 scientist. I like data. I like facts. And so I think when it
21 comes -- when it comes down to it, I can be impartial based on
22 the facts and the data that is presented at the time.

23 **MR. SPIRO:** Thank you very much.

24 **THE COURT:** Mr. Alexander, anything?

25 **MR. ALEXANDER:** Nothing, Your Honor.

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1 **THE COURT:** All right. Thank you. Please stick
2 around.

3 **PROSPECTIVE JUROR 50:** Thanks.

4 **THE COURT:** Thank you.

5 (Pause in proceedings.)

6 **THE COURT:** Good afternoon. How are you?

7 **PROSPECTIVE JUROR 51:** Good. How are you?

8 **THE COURT:** I'm great. So you are an RN?

9 **PROSPECTIVE JUROR 51:** Yes.

10 **THE COURT:** And how long have you been doing that?

11 **PROSPECTIVE JUROR 51:** About six months.

12 **THE COURT:** And what were you doing before that?

13 **PROSPECTIVE JUROR 51:** Working as a medical assistant
14 and admin in a hospital.

15 **THE COURT:** And so you are at Kaiser, what location?

16 **PROSPECTIVE JUROR 51:** Redwood City.

17 **THE COURT:** Are you enjoying it so far?

18 **PROSPECTIVE JUROR 51:** It has good days and bad days.

19 **THE COURT:** That's life. The -- the reason that I
20 wanted to ask you separately about things was that you had --
21 you expressed strong feelings about Mr. Musk and -- as a
22 privileged male and that you were biased against him. You've
23 heard me say he is not involved in the case.

24 Will you -- would your feelings about Mr. Musk impact your
25 ability to treat Tesla fairly and impartially in the case?

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1 **PROSPECTIVE JUROR 51:** After you explained that he is
2 not involved, I don't think it will.

3 **THE COURT:** Okay. You also indicated that you think
4 Tesla is overly hyped, and given the "overhype" and your
5 view of Mr. Musk, is there anything about that that is going to
6 let Mr. Diaz start just a little bit ahead in the case, or will
7 you be -- will both of them -- can you treat them equally and
8 fairly and be -- let your determination be made from your
9 evaluation of the evidence?

10 **PROSPECTIVE JUROR 51:** I think I could try my best.
11 The only thing with, like, in my personal experience and, you
12 know, being a person of color and discrimination, I have seen
13 it in my own life and then also working in, like, the hospital
14 setting, so I'm not sure if I would be able to be, like,
15 truthfully honest where the cases are both fair on both parts.

16 **THE COURT:** Right. That -- I wondered about that,
17 whether your experience with discrimination and what you've
18 seen in your life would make you just at the beginning more
19 sympathetic to Mr. Diaz and maybe more likely to believe his
20 testimony about what happened than other people.

21 **PROSPECTIVE JUROR 51:** Yes, I agree.

22 **THE COURT:** Okay. So -- so do you think in light of
23 that that you could not be a fair and impartial juror in this
24 case?

25 **PROSPECTIVE JUROR 51:** I would try my best, but

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1 honestly, I don't think -- yeah, I don't think I would be fair
2 and impartial, unfortunately.

3 **THE COURT:** Okay. Mr. Alexander, do you have any
4 questions?

5 **MR. ALEXANDER:** Yes, please.

6 Have you ever had experiences where people pretended that
7 they were discriminated against but they were not?

8 **PROSPECTIVE JUROR 51:** I'm trying to think. Possibly.

9 **MR. ALEXANDER:** And have you heard of people playing
10 the race card when it's not -- when it isn't appropriate, when
11 it's not truthful?

12 **PROSPECTIVE JUROR 51:** Yes.

13 **MR. ALEXANDER:** So you understand that just because
14 people claim discrimination doesn't necessarily mean it occurs?

15 **PROSPECTIVE JUROR 51:** Yes, I understand.

16 **MR. ALEXANDER:** And even though you may have
17 experienced discrimination, you don't automatically think that
18 someone else was discriminated against; is that correct?

19 **PROSPECTIVE JUROR 51:** Yes.

20 **MR. ALEXANDER:** And so in your mind, do you think you
21 can separate your experiences in terms of discrimination from
22 what you might hear in this case?

23 **PROSPECTIVE JUROR 51:** I'm not sure.

24 **MR. ALEXANDER:** Okay. Well, in terms of being not
25 sure, we can only ask that you do your best. The Court's going

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1 to give an instruction as to what your duties would be as a
2 juror, and based on those instructions, would you be able to
3 give your best effort to be fair and impartial to both sides
4 regardless of your previous experience?

5 **PROSPECTIVE JUROR 51:** Yes.

6 **MR. ALEXANDER:** And so in that sense, could you take
7 and isolate the fact that you have experienced discrimination
8 in your own life, can you take and isolate that from the facts
9 in this case in terms of making a determination and following
10 the judge's instructions?

11 **PROSPECTIVE JUROR 51:** Yes.

12 **MR. ALEXANDER:** Now, let me ask you this. In this
13 case, liability's already been determined, so you will only be
14 making a determination, if you're picked as a juror, as to the
15 amount of damages, not whether damages should be determined.

16 Would that also help you be fair and impartial in this
17 case, the fact that you wouldn't have to determine whether
18 there's discrimination, you're just determining how much money
19 for harm, how much money for punitive damages? Can you do
20 that?

21 **PROSPECTIVE JUROR 51:** Yes.

22 **MR. ALEXANDER:** Nothing further, Your Honor.

23 **THE COURT:** Mr. Spiro?

24 **MR. SPIRO:** One of the arguments -- and thank you for
25 being so honest with your answers. One of the arguments that

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1 you're going to be getting is that because discrimination is so
2 rampant, because this company has such a problem, that there
3 should be more punishment, there should be a higher dollar
4 value; right? So it's not really quite as it's framed as it's
5 already been determined. They're going to say to you, but,
6 look, it's such a problem in the world. Don't you feel it,
7 don't you see it; right?

8 And so given what you said originally, you know, it's not
9 as if damages is just completely wedded to, like, the medical
10 bill, so I just want to make sure that's clear.

11 So given that, don't some of your concerns that you
12 answered to the judge honestly still remained?

13 **PROSPECTIVE JUROR 51:** I'm sorry. Can you repeat
14 that? I'm having trouble understanding.

15 **MR. SPIRO:** Sure. So you were asked, you know, this
16 is just about damages, does that make it easier for you. And
17 part of the damage argument they're going to be making to you
18 is that the world is a racist place and that this is racist
19 company and that there's problems bigger than just the isolated
20 incident.

21 So what I'm asking you is: Don't you think that given,
22 you know, your honest answers to the judge earlier that that
23 would play a part in your mind and in your decision?

24 **PROSPECTIVE JUROR 51:** I mean it could, but I would
25 try my best to like, you know, stick with the facts and the

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1 rules of law.

2 **MR. SPIRO:** Okay. And that's -- but that's the only
3 issue -- you obviously will try your best. But your
4 statements, even though you know that now the damages portion
5 is what -- the judge has told you that earlier -- is what
6 you're going to be focused on, you still stand by your
7 statements earlier to the Court about some concerns that you
8 have?

9 **PROSPECTIVE JUROR 51:** Yes.

10 **MR. SPIRO:** All right. Nothing further.

11 **THE COURT:** All right. Thank you. Stick around.

12 That was 51. This is 53.

13 (Pause in proceedings.)

14 **PROSPECTIVE JUROR 53:** Hello.

15 **THE COURT:** Good afternoon. How are you?

16 **PROSPECTIVE JUROR 53:** Very good.

17 **THE COURT:** And so you're a physician. What's your
18 speciality?

19 **PROSPECTIVE JUROR 53:** Internal medicine.

20 **THE COURT:** And how long have you been at Kaiser doing
21 general medicine?

22 **PROSPECTIVE JUROR 53:** Since 2010.

23 **THE COURT:** And which location are you at?

24 **PROSPECTIVE JUROR 53:** Walnut Creek.

25 **THE COURT:** Great. So the -- you had indicated with

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1 regard to Tesla that it picked up the behaviors of other
2 corporations and put profit before other goals.

3 And I'm wondering whether that means that you would have a
4 hard time treating them equally with Mr. Diaz, which is --
5 would be your obligation as a juror?

6 **PROSPECTIVE JUROR 53:** Well, I think what I said was a
7 normal behavior of any corporation, so I think this case would
8 be different because it's -- it has nothing to do with profits,
9 probably.

10 **THE COURT:** Okay.

11 **PROSPECTIVE JUROR 53:** That's what I believe.

12 **THE COURT:** I read it that way, too. But I wondered
13 whether if it was any corporation who was being sued by an
14 individual, whether you would have -- whether you would start
15 when you listen to the evidence slightly favoring the
16 individual because corporations are just focused on profit?

17 **PROSPECTIVE JUROR 53:** Well, it's hard to say. I
18 think -- I have to know what the evidence is, what the case was
19 all about and -- but -- yeah, that's all I have to say.

20 **THE COURT:** Okay. Well -- and I'm going to instruct
21 you that you have to treat Tesla equally and fairly, the same
22 way you treat Mr. Diaz. Would you be able to do that?

23 **PROSPECTIVE JUROR 53:** I think I can, yes.

24 **THE COURT:** And is there -- are you aware of any --
25 anything that makes you -- let me ask it again. Do you think

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1 you could serve as a fair and impartial juror in this case?

2 **PROSPECTIVE JUROR 53:** Can you repeat the question?

3 **THE COURT:** Do you think you could be fair and
4 impartial as a juror?

5 **PROSPECTIVE JUROR 53:** I think I can, yes.

6 **THE COURT:** Okay. All right.

7 Mr. Spiro, any --

8 **MR. SPIRO:** Just one quick follow-up question. Thank
9 you, Doctor.

10 One of the questions -- the main question you're going to
11 be asked to decide is damages and part of what they're going to
12 be arguing is that the corporation needs to pay a lot of
13 damages to be punished so that they learn.

14 **PROSPECTIVE JUROR 53:** Right.

15 **MR. SPIRO:** Right. So it seems that you have a strong
16 opinion on a related subject, right, which is that corporations
17 put profits over people essentially, right, if I understood
18 your answer correctly?

19 **PROSPECTIVE JUROR 53:** That's my personal
20 understanding. I think when Tesla started 10, 15 years ago
21 everybody talked that they're -- they're doing a revolution in
22 the -- in a green industry. But I think recently things that
23 I've heard just proved to me, at least, otherwise; that the
24 behavior is actually pretty much the same, which definitely
25 surprised me, actually.

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1 **MR. SPIRO:** Right. But I hear your answering mean
2 specifically that you would have -- that the behavior you see
3 at Tesla is the same. You're talking about Tesla specifically?

4 **PROSPECTIVE JUROR 53:** Right.

5 **MR. SPIRO:** So if you come in with that view, right,
6 doesn't that make you inherently more susceptible to the
7 arguments? You don't come in totally even; right, Doctor? You
8 come in slightly leaning in the other direction because you
9 have this preformed view; does that --

10 **PROSPECTIVE JUROR 53:** In my affect, I'm not sure. I
11 think maybe I'm in the middle of that, but it may affect. I'm
12 not able to say that 100 percent, yeah.

13 **MR. SPIRO:** Okay. Thank you.

14 **THE COURT:** All right. Mr. Alexander, anything?

15 **MR. ALEXANDER:** Nothing, Your Honor.

16 **THE COURT:** All right. Thank you. Stick around we'll
17 be back with everybody in a moment.

18 (Pause in proceedings.)

19 **THE COURT:** Good afternoon. And I don't think you're
20 the person I was expecting. What Juror Number are you?

21 **PROSPECTIVE JUROR 55:** 55.

22 **THE COURT:** 55. Okay.

23 And, Ms. Davis, let's get 54 next, but let's talk with
24 Juror 55 now. Welcome.

25 **PROSPECTIVE JUROR 55:** Thank you.

3 **PROSPECTIVE JUROR 55:** Just having fun. Puzzling,
4 Wordle-ing. My husband and I go up to Napa. We have a place
5 up there as well, so we go back and forth between the two.
6 Waiting for our third daughter to graduate from college and not
7 doing as much as we had hoped to be doing in retirement. We
8 had planned a lot of travel, but we haven't really -- we've
9 done two trips. They were both in the last six months. We're
10 still very, very conservative. We've been inside a restaurant
11 twice, but -- we're COVID virgins.

12 (Laughter)

13 **PROSPECTIVE JUROR 55:** Just cautious.

14 **THE COURT:** Yeah. Everybody's got a different take,
15 you know, and I support whatever people are feeling because
16 it's just a difficult time.

17 **PROSPECTIVE JUROR 55:** It is. It's nice to finally
18 actually feel better about getting out.

19 **THE COURT:** Well, I'm glad you are here. You were
20 doing technology product management. What was that like?

21 **PROSPECTIVE JUROR 55:** Yeah. I worked in tech almost
22 my whole career, and I was actually doing project management,
23 and then I also led some development groups.

24 I did -- I started at Visa with network architecture and
25 strategy, so I got to do a lot of different things over my

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1 career, sometimes individual contributor, and then I had a team
2 of as many of 150 employees, I think, at one point.

3 **THE COURT:** Do you miss it?

4 **PROSPECTIVE JUROR 55:** I miss the camaraderie. I miss
5 the people. I do miss the social aspects of it.

6 **THE COURT:** So you -- you wrote a fair amount about
7 Mr. Musk and -- which is why I wanted to ask you questions
8 about him. And it's a -- you have something of a balanced --
9 but some positive and some very negative --

10 **PROSPECTIVE JUROR 55:** Yeah.

11 **THE COURT:** -- perspectives.

12 You've heard that he's not -- he's not going to be a
13 witness here. He's not involved in this.

14 Is there -- do you think that your view of him would
15 impact your --

16 **PROSPECTIVE JUROR 55:** No.

17 **THE COURT:** -- view of Tesla or the evidence in this
18 case?

19 **PROSPECTIVE JUROR 55:** No, I don't think that view --
20 plus a lot of it's based on hearsay; right?

21 **THE COURT:** Okay. And is there anything -- do you
22 think you would be able to serve as a fair and impartial juror
23 in this case?

24 **PROSPECTIVE JUROR 55:** Yes.

25 **THE COURT:** Mr. Spiro?

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1 **MR. SPIRO:** No questions. Thank you very much.

2 **THE COURT:** Mr. Alexander?

3 **MR. ALEXANDER:** No questions.

4 **THE COURT:** Thank you.

5 **PROSPECTIVE JUROR 55:** Okay.

6 **THE COURT:** Don't go far.

7 (Pause in proceedings.)

8 **THE COURT:** Let's go to 54.

9 (Pause in proceedings.)

10 **THE COURT:** Good afternoon.

11 **PROSPECTIVE JUROR 54:** Good afternoon.

12 **THE COURT:** How are you today.

13 **PROSPECTIVE JUROR 54:** It's a beautiful day, yes, it
14 is.

15 **THE COURT:** It is a beautiful day.

16 And so, are you still employed?

17 **PROSPECTIVE JUROR 54:** Yes.

18 **THE COURT:** And how long -- and you're a psychiatrist.
19 How long have you been doing that?

20 **PROSPECTIVE JUROR 54:** I started working as a
21 psychiatrist back in 1996.

22 **THE COURT:** So, one of the things that you wrote in
23 your questionnaire was that you can assess guilt or innocence
24 by looking at somebody's face?

25 **PROSPECTIVE JUROR 54:** Yeah. It's not that I have

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1 special powers, but it's the expectation in our work. For
2 example, disability evaluations, some people they have to deal
3 with the truth or lying, and part of the psychiatric evaluation
4 is to decide, make recommendations about that.

5 **THE COURT:** So -- so I'm going to instruct you in this
6 case that that's not the way to judge credibility in court,
7 that what you have to do is you have to listen to -- to all of
8 the evidence, think about it, deliberate about it with other
9 people in order to form a judgment, which is a very -- it's a
10 very different process than the one that you are -- that you
11 are using.

12 Would you be able to -- to follow those instructions and
13 then deliberate with your fellow jurors when they were
14 following my instructions?

15 **PROSPECTIVE JUROR 54:** I can try.

16 **THE COURT:** Okay. Well, the -- some -- there are some
17 things where when people say they can try and it's a -- it's a
18 cinch that they're going to be able to do their best. You've
19 been professionally doing this since -- you know, for 25 -- 27,
20 28 years. And I'm just wondering whether, in fact, you would
21 be able to -- to -- to follow those instructions with respect
22 to credibility?

23 **PROSPECTIVE JUROR 54:** I will do my best to follow
24 instructions.

25 **THE COURT:** All right. The -- you've also apparently

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1 had many patients who worked at Tesla?

2 **PROSPECTIVE JUROR 54:** Yes.

3 **THE COURT:** And I don't want to inquire into their
4 views because I don't want to get involved with doctor/patient
5 information, but this case involves one person, one employee,
6 and his experiences at Tesla.

7 Would you be able to put out of your mind all of the other
8 information that you have learned over time about working at
9 Tesla and solely judge Mr. Diaz's experience from what you
10 learned here in court on the witness stand?

11 **PROSPECTIVE JUROR 54:** I will put all my effort.

12 **THE COURT:** Okay. Do you think that -- given what you
13 know, that when the case starts, one side or the other would
14 have an un- -- would have an advantage, just given the depth of
15 your experience, that either Tesla would have a slight
16 advantage or Mr. Diaz would have a slight advantage?

17 **PROSPECTIVE JUROR 54:** I know nothing about this case,
18 so I don't know how to answer that question. I'm -- I have to
19 say, however, that not only my training but all these years, my
20 commitment has been to be an advocate for patients and their
21 rights. So I don't know if this is helping to answer this
22 question.

23 **THE COURT:** So, as an advocate for individuals, the --
24 the individual here is Mr. Diaz. The company is entitled to be
25 treated just the same way as Mr. Diaz. They have to start at

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1 the same level. They are treated equally and justly.

2 Do you think you'd be able to do that?

3 **PROSPECTIVE JUROR 54:** I will try my best with all my
4 effort.

5 **THE COURT:** Okay. I believe you.

6 You have -- you indicated that you've been both
7 discriminated against and had claims of discrimination made
8 against you.

9 **PROSPECTIVE JUROR 54:** Oh, yes.

10 **THE COURT:** And so this issue involves discrimination.

11 Is there anything about your experiences that would make
12 you more likely to believe Mr. Diaz or believe Tesla, given
13 those experiences?

14 **PROSPECTIVE JUROR 54:** I'm not sure how to answer that
15 question. I would love to give an absolute answer. I would
16 love to be the person to say I'm completely free of a bias, but
17 the truth is that this is my background.

18 **THE COURT:** Okay. All right.

19 Mr. Spiro, any questions?

20 **MR. SPIRO:** Yeah. I mean just one follow-up. And
21 thank you for what you do and thank you for being so honest.

22 Given that you're advocating for folks that work at Tesla
23 or worked at Tesla in the capacity you decided, do you sort of
24 think after hearing all of these questions that this may not be
25 the right case for you? That you might be able to be fairer in

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1 another case, but given your background, given the questions
2 you're here answering, given your experience advocating for
3 Tesla employees in that context, that this is probably not the
4 right case?

5 **PROSPECTIVE JUROR 54:** I feel so, yeah.

6 **MR. SPIRO:** No further questions.

7 **THE COURT:** All right. Mr. Alexander?

8 **MR. ALEXANDER:** You understand that as a juror, you
9 would not be an advocate?

10 **PROSPECTIVE JUROR 54:** Yes.

11 **MR. ALEXANDER:** Yes. And so could you separate what
12 you do for a living from your role as a juror and listen to the
13 facts to determine what actions to take?

14 **PROSPECTIVE JUROR 54:** I -- I want to say yes.

15 **MR. ALEXANDER:** Okay. And so I understand that you
16 have treated patients that have been at Tesla.

17 Can you -- just because those patients had issues, you
18 know that there are -- you understand there are a number of
19 other employees that work at Tesla that you haven't seen that
20 likely had no issues; right?

21 **PROSPECTIVE JUROR 54:** Yes.

22 **MR. ALEXANDER:** So just because you treated patients
23 that had issues doesn't mean that everybody at Tesla had
24 issues; do you understand that?

25 **PROSPECTIVE JUROR 54:** Yes.

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1 **MR. ALEXANDER:** So could you isolate your experience
2 with those limited patients and put that aside and just listen
3 to the facts in this case to make a determination about these
4 facts?

5 **PROSPECTIVE JUROR 54:** I will try my best.

6 **MR. ALEXANDER:** When you say you'll try your best,
7 that means that you would listen to the Court's instructions
8 and based on those instructions you would make a determination;
9 is that correct?

10 **PROSPECTIVE JUROR 54:** Yes.

11 **MR. ALEXANDER:** All right. Nothing further.

12 **THE COURT:** All right. Thank you. Please wait
13 outside.

14 Number 57 now, I think.

15 (Pause in proceedings.)

16 **THE COURT:** Good afternoon.

17 **PROSPECTIVE JUROR 57:** Good afternoon, Your Honor.

18 **THE COURT:** So, you are a scientist. Tell me -- tell
19 me what you do.

20 **PROSPECTIVE JUROR 57:** I'm an imaging scientist, so I
21 specialize in the analysis of images of typically biological
22 samples, and I've worked for a small software company that
23 develops a software for that purpose. We work together with
24 academic institutions and companies.

25 **THE COURT:** And how long have you been doing that?

THE COURT: Because this is -- it's one of your fundamental rights as a citizen and -- to -- to have a jury of your peers deal with cases that involve you, and our great and diverse country has all sorts of people who add value to the

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1 way that deliberative bodies can think together and come to a
2 fair result.

3 So I think it would be wonderful if you had that
4 opportunity, and I'm sure you would be superb.

5 **PROSPECTIVE JUROR 57:** Thank you.

6 **THE COURT:** All right. Mr. Spiro, any questions?

7 **MR. SPIRO:** No. Thank you, sir.

8 **THE COURT:** Mr. Alexander?

9 **MR. ALEXANDER:** None.

10 **THE COURT:** All right. Thank you very much. We'll be
11 coming back here in just a second. We've got one more person,
12 which is Juror 58.

13 (Pause in proceedings.)

14 **THE COURT:** Then I'm going to bring everybody back in.
15 I have a few more questions for the group, and then I'm going
16 to turn it over to the lawyers for about 10 minutes each.

17 **MR. SPIRO:** Thank you, Your Honor.

18 (Pause in proceedings.)

19 **THE COURT:** Please step up to the mic.

20 **PROSPECTIVE JUROR 58:** Afternoon.

21 **THE COURT:** Good afternoon. So, how long -- is it
22 California Yes In My Backyard?

23 **PROSPECTIVE JUROR 58:** Yes, that's correct,
24 Your Honor.

25 **THE COURT:** And how long have you been the policy

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1 director?

2 **PROSPECTIVE JUROR 58:** Almost a year. I started last
3 May.

4 **THE COURT:** And how is it going?

5 **PROSPECTIVE JUROR 58:** It's going very well. We still
6 have a housing crisis, but we're working on it.

7 **THE COURT:** Well, I hope you are able to solve that
8 soon.

9 **PROSPECTIVE JUROR 58:** Thank you.

10 **THE COURT:** The -- you have indicated some pretty
11 strong views about both Mr. Musk and Tesla. So I wanted to ask
12 you about that.

13 I'll start with Mr. Musk. He is not in the case, as I
14 explained earlier. He is not involved in any of the
15 proceedings.

16 Would your dislike for him bleed over into your
17 perspective on Tesla so that when the case started, you would
18 be in favor in some small or not small way to Mr. Diaz?

19 **PROSPECTIVE JUROR 58:** Well, obviously if I were
20 selected for the jury, I would try to the best of my ability to
21 separate my feelings from Mr. Musk from the case itself.

22 Having said that, I do think it would be -- it would be
23 difficult for me.

24 **THE COURT:** Okay. You also -- you don't like Tesla as
25 a company?

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1 **PROSPECTIVE JUROR 58:** That's correct. I should also
2 note, Your Honor, that I -- I didn't raise my hand when you
3 asked if anyone had heard of the case before this, but I do
4 actually think I had read news reports before the initial
5 finding.

6 **THE COURT:** Okay. And you also read Mr. Spiro's name,
7 I guess, somewhere. Is that true?

8 **PROSPECTIVE JUROR 58:** Yes.

9 **THE COURT:** So as you -- as you stand here now, you
10 don't think you would be able to be a fair and impartial juror?

11 **PROSPECTIVE JUROR 58:** Like I said, I would try my
12 best. But I mean, given my prior awareness of the case and my
13 feelings about Tesla and Mr. Musk, I do think it would be -- it
14 would be difficult for me to be totally impartial.

15 **THE COURT:** Well, my suspicion is we don't get down to
16 you anyway.

17 But Mr. Alexander, do you have any questions?

18 **MR. ALEXANDER:** No, Your Honor.

19 **THE COURT:** Mr. Spiro?

20 **MR. SPIRO:** No, Your Honor. Thank you.

21 **THE COURT:** Okay. So thank you. I'm not going to
22 release you now, but my suspicion is that soon enough you will
23 be.

24 Ms. Davis, if you can call everybody back in, I think
25 we'll just roll right into the next phase.

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1 (Pause in proceedings.)

2 (Proceedings were heard in the presence of the prospective
3 jury panel.)

4 **THE COURT:** Ms. Davis, you may want to prop that door
5 open again just for --

6 (Pause in proceedings.)

7 **THE COURT:** General Services Administration has not
8 been our friend today.

9 (Pause in proceedings.)

10 **THE COURT:** Please be seated, everybody.

11 **THE CLERK:** Please let me know if you notice your
12 neighbors are not here and they weren't excused in the first
13 session.

14 (No response.)

15 **THE COURT:** All right. Ladies and gentlemen, I was
16 only an hour and 20 minutes off on my --

17 (Laughter)

18 **THE COURT:** -- estimate for how long that section of
19 this is -- was going to take, and I apologize for waiting. I
20 can promise you, you would have felt better being out wherever
21 you were doing whatever you were doing than waiting inside here
22 that whole time.

23 I'm going to -- what's going to happen now, I have a few
24 more questions that I want to lay out for the group, then the
25 lawyers will have about 10 minutes of questioning each, and

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1 then we'll actually get -- we will take another short break
2 that I can time and then we will get on with the actual
3 selection itself.

4 So has -- is anyone having any trouble understanding me
5 today?

6 (No response.)

7 **THE COURT:** Is everyone prepared to follow my
8 instructions on the law and the matters that have already been
9 determined in the first phase of the case? Will you all do
10 that?

11 **JURY PANEL:** Yes.

12 **THE COURT:** Jurors may not express or form any
13 opinions on the merits of the case until the end of the trial
14 when it's been finally submitted to them for a verdict, that is
15 to say, until they have had the benefit of the arguments of
16 counsel and the instructions of the Court.

17 If you are selected to sit on this case, will you be able
18 to -- and willing to render a verdict based solely on the
19 evidence presented at trial and on my instructions regarding
20 the matters established already and the law and to disregard
21 any ideas, notions, or beliefs about the law that you may have
22 encountered other than my instructions in reaching your
23 verdict?

24 **JURY PANEL:** Yes.

25 **THE COURT:** It is a long question. We've heard from

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1 you specifically about concerns that you might have had. Is
2 there any other concern that anybody would have about this?

3 (No response.)

4 **THE COURT:** None. Okay.

5 One of the instructions that I'm going to give you is not
6 to discuss the case with anybody until your jury service has
7 been concluded.

8 Does anyone have any trouble with keeping matters
9 confidential?

10 (No response.)

11 **THE COURT:** The case likely will be given to you on
12 March -- on Friday, March 31. And then you will deliberate.
13 You will take as long as you need to make a decision, and you
14 can decide then how late to deliberate once you get the case.
15 You will not be deliberating on the weekend.

16 I recognize that service on the jury is inconvenient, but
17 as I said before, our system of justice depends on everyone's
18 willingness to serve.

19 Some of you have explained reasons why this case is not
20 the right one for you. Does anybody have -- have any special
21 disability or problem that makes serving as a member of the
22 jury difficult or impossible that you haven't told me about?

23 (No response.)

24 **THE COURT:** Does anyone suffer from any mental,
25 physical, or emotional impairment that would make it difficult

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1 for you to sit on the jury besides anything that you've told me
2 about?

3 (No response.)

4 **THE COURT:** Besides anything that you've told me
5 about, if you were one of the parties in this case, do you know
6 of any other reason why you wouldn't be content to have this
7 case tried by someone with your frame of mind?

8 (No response.)

9 **THE COURT:** So any bias that you haven't expressed,
10 one way or another.

11 (No response.)

12 **THE COURT:** Can anyone think of any other matter that
13 may have some bearing on your qualifications as a juror?

14 (No response.)

15 **THE COURT:** All right. Mr. Alexander, do you have any
16 questions for the panel?

17 **MR. ALEXANDER:** Thank you, Your Honor.

18 Good afternoon. Because there are so many of you, I'm
19 going to be asking questions to the group to begin with.

20 So, first, by a show of hands -- and if you can keep your
21 hands up and then I will get the number from you -- how many of
22 you have ever worked in a workplace where it was common for
23 workers to make daily comments or jokes that people might find
24 racist or offensive or inappropriate without anyone openly
25 being offended or expressing that they were upset? Anyone?

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1 And what is your Juror Number?

2 **PROSPECTIVE JUROR 5:** I'm sorry. 5.

3 **MR. ALEXANDER:** What is your number, sir?

4 **PROSPECTIVE JUROR 25:** 25.

5 **MR. ALEXANDER:** 25.

6 And, ma'am?

7 **PROSPECTIVE JUROR 16:** 16.

8 **MR. ALEXANDER:** 16. Thank you.

9 In the back I saw some hands.

10 **PROSPECTIVE JUROR 44:** 44.

11 **MR. ALEXANDER:** 44, thank you. And Number --

12 **PROSPECTIVE JUROR 4:** 4.

13 **MR. ALEXANDER:** Number 4.

14 Anyone that I have missed?

15 Could you repeat the question.

16 **MR. ALEXANDER:** In the green shirt, can you tell me
17 what number you are? What is your number?

18 **PROSPECTIVE JUROR 41:** 41.

19 **MR. ALEXANDER:** I will come back to you. And, ma'am,
20 in the --

21 **PROSPECTIVE JUROR 23:** 23.

22 **THE COURT:** Mr. Alexander, also on the right. Look to
23 the right.

24 **MR. ALEXANDER:** I'm sorry. Can you tell me your
25 number?

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1 **PROSPECTIVE JUROR 51:** 51.

2 **MR. ALEXANDER:** 51. And --

3 **PROSPECTIVE JUROR 50:** 50.

4 **MR. ALEXANDER:** Thank you. And now to repeat the
5 question, it is: How many of you have ever worked in a
6 workplace where it was common for workers to make daily
7 comments or jokes that some people might find racist,
8 offensive, or inappropriate without anyone openly expressing
9 offense or being upset?

10 All right. Thank you. And Number 13. Thank you.

11 **PROSPECTIVE JUROR 13:** With reconsideration, yes.

12 **MR. ALEXANDER:** Thank you.

13 Next, by show of hands, so in a civil lawsuit like this,
14 monetary compensation is the only thing that a victim of racial
15 harassment is allowed to ask for.

16 Being totally honest, do you have any objections or
17 disagreement with these kinds of lawsuits or money compensation
18 for nonfinancial or emotional stress harm like trauma,
19 humiliation, suffering from racism? By a show of hands, who
20 has an objection to awarding damages for that type of harm?
21 Anyone?

22 (No response.)

23 **MR. ALEXANDER:** Thank you.

24 And now this will require individual responses.

25 Let's say that a company does a good job creating zero

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1 tolerance rules for harassment in the workplace.

2 What are your feelings about whether or not the company
3 has done enough at that point or whether a company should
4 monitor and police the workplace to make sure those rules are
5 actually being followed and enforced? I want to ask that
6 question of a few people starting with Juror Number 3.

7 **THE COURT:** If you wouldn't mind stepping to the mic.

8 (Pause in proceedings.)

9 **PROSPECTIVE JUROR 3:** Could you please elaborate what
10 you mean by "monitor"?

11 **MR. ALEXANDER:** So what's --

12 **PROSPECTIVE JUROR 3:** The second part of the question.

13 **MR. ALEXANDER:** So once a company puts rules, policies
14 in place --

15 **PROSPECTIVE JUROR 3:** Right.

16 **MR. ALEXANDER:** -- does the company have an obligation
17 to follow up to make sure those rules are being followed, or is
18 it enough just to put the policy on the books?

19 **PROSPECTIVE JUROR 3:** They need to have an obligation
20 to make sure THAT rules are followed.

21 **MR. ALEXANDER:** Thank you. That is my only question
22 of you. Thank you very much.

23 Juror Number 11, same question for you.

24 (Pause in proceedings.)

25 **PROSPECTIVE JUROR 11:** My thoughts on it is as long as

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1 the company is able to put in a policy, some sort of kind of
2 structure for the workers, I would like to think that the group
3 would follow that. But if necessary, if we need a little bit
4 of discipline, again, I think it is a little necessary,
5 depending on the company, that they should imply some sort of
6 I guess you could say authority of some sort just to make sure
7 that we're all on the same page.

8 **MR. ALEXANDER:** Excellent. Thank you very much.

9 Juror Number 13.

10 (Pause in proceedings.)

11 **PROSPECTIVE JUROR 13:**

12 **MR. ALEXANDER:** If you could answer that question.

13 **PROSPECTIVE JUROR 13:** Yes, sir. I think it is
14 absolutely necessary. I have worked for the Dow Chemical
15 Company, Department of Labor, Department of Defense. We always
16 had great rules in place and people to follow up and monitor
17 them.

18 (Pause in proceedings.)

19 **MR. ALEXANDER:** Thank you very much.

20 Number 16.

21 **PROSPECTIVE JUROR 16:** So I believe the company, if
22 it's putting that policy on -- and it should be, of course --
23 they should take care of cases if it's not happening the proper
24 way.

25 **MR. ALEXANDER:** So you think that they should follow

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1 up?

2 **PROSPECTIVE JUROR 16:** They should follow up, yeah.

3 **MR. ALEXANDER:** Okay. Thank you very much.

4 Number 17.

5 **PROSPECTIVE JUROR 17:** I believe if a company puts
6 a -- something in place, they should follow through and make
7 sure that it is being actually monitored.

8 **MR. ALEXANDER:** Thank you.

9 Number 18?

10 **PROSPECTIVE JUROR 18:** I also think a follow-up is
11 required. Otherwise, I don't know how else you would know that
12 it actually worked.

13 **MR. ALEXANDER:** Thank you.

14 Number 20.

15 **PROSPECTIVE JUROR 20:** In my opinion, a company is
16 accountable for not only list, but also to implement those
17 policies to make sure those are implemented correctly.

18 **MR. ALEXANDER:** Thank you.

19 Number 22.

20 **PROSPECTIVE JUROR 22:** Yes, I think they should follow
21 up on their policies.

22 **MR. ALEXANDER:** Thank you.

23 Number 25.

24 **PROSPECTIVE JUROR 25:** Yeah, a company should follow
25 up on any violations.

Number 28.

MR. ALEXANDER: Thank you very much.

And Number 37.

MR. ALEXANDER: Thank you.

Since money is the only way a jury can hold a company accountable and cause it to fix harm, the question I have is: Are you open to the possibility of awarding millions of dollars of damages against a company if you find that they have violated policy? By a show of hands, is there anyone who would not be willing to award millions of dollars for damages under circumstances where a large company has violated the law?

(No response.)

(No response.)

MR. ALEXANDER: If I could -- thank you for -- thank you for raising your hands. Number 27 and --

3 | There was a hand here, Number 55. Thank you.

7 So I just want to make sure. Is there anyone here who
8 would feel comfortable who would not be willing to award
9 damages of a million dollars assuming we met our burden of
0 proof? Anyone else?

12 **MR. ALEXANDER:** Thank you.

15 **MR. ALEXANDER:** This will be my last question.

17 **MR. ALEXANDER:** Thank you.

23 | **PROSPECTIVE JUROR:** Can you repeat the question?

25 | Are you open to the possibility that the larger and the

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1 wealthier the company, the larger the punitive damage award
2 must be in order to hold the company accountable and change the
3 company's behavior?

4 Of the people -- if you've already answered yes to that
5 question, then you don't have to raise your hand. Is there
6 anyone else who would answer that question?

7 Number 57. Thank you.

8 (Pause in proceedings.)

9 **MR. ALEXANDER:** Anyone else?

10 **PROSPECTIVE JUROR:** Are you asking if we're -- or
11 opposing?

12 **MR. ALEXANDER:** I will ask the question more clearly.
13 Thank you very much.

14 Under circumstances where a company is larger and
15 wealthier, would you be willing to award punitive damages
16 against that company because they are larger or wealthier?
17 That's essentially the question. If you would not, please
18 raise your hands, if you would not be willing.

19 Number 37, I did not have you before. Thank you.

20 Anyone else who would not be willing -- thank you.

21 **PROSPECTIVE JUROR 49:**

22 **MR. ALEXANDER:** Number 49.

23 Have I missed -- 30? And in the back in the green shirt,
24 I missed your -- 41.

25 I don't see any other hands.

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1 Thank you very much.

2 **THE COURT:** All right. Thank you.

3 And ladies and gentlemen, I'll just let you know that the
4 instructions on punitive damages and what's appropriate and not
5 appropriate will come from me, and you'll get those at the end
6 of the case.

7 Mr. Spiro.

8 **MR. SPIRO:** Thank you, Your Honor.

9 And good afternoon. Thanks to all of you for being here
10 and for your honesty thus far. I know when you filled out your
11 juror forms, there's an attestation that says that you declare
12 under the penalty of perjury and it's got all that language in
13 it.

14 But what we're I'm looking for -- and I'm assuming
15 everyone's answers have been honest so far. What I'm looking
16 for in addressing you now is just brutal and complete honesty.
17 What that means is, you know, being complete and transparent in
18 your answers, not holding anything back. If I ask a question
19 that's like basically you know what the answer is, you don't
20 kind of hide behind word choice, you just tell me, you say,
21 "This is the time I need to tell you this." There's no coming
22 back to this moment; right? Once the jury gets selected and
23 that door closes, it will be too late to come back and say, you
24 know, I really should have told you something, I'm having this
25 feeling that may affect my ability to serve on this jury.

11 Is there anybody who thinks knowing yourselves better than
12 I know you that knowing that something wrong happened that that
13 is going to upset you to the point where you can't now separate
14 out the damages part of this?

17	(No response.)
----	----------------

18 **MR. SPIRO:** Okay. Seeing no hands. And that's even
19 harder in this case than in almost any other case because the
20 subject matter of this case is an upsetting one. It just is.
21 Okay? To probably everybody in this room.

22 So the question I have for all of you is: When you hear
23 that something happened that should not have happened and it
24 happened on a very upsetting subject matter, is that the type
25 of thing knowing yourselves as well as you do that's going to

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1 upset you to the point where you can't sort of say, okay, that
2 happened, that was wrong, it's very upsetting, I need to
3 separate and I need to make a determination based on law and
4 the rule of law?

5 Does everybody understand what I'm asking? Because it's a
6 very -- it's a very hard question.

7 So does anybody think that they're going to have a problem
8 with that?

9 (No response.)

10 **MR. SPIRO:** Juror Number 15?

11 **PROSPECTIVE JUROR 15:** Yes.

12 **MR. SPIRO:** Any issue with that?

13 **PROSPECTIVE JUROR 15:** No.

14 **MR. SPIRO:** I thought you looked like you might be
15 standing or raising your hand.

16 The other thing is that when you know something happened
17 that should not have happened, there's also a human tendency to
18 think everything else must have happened; right?

19 You know, Juror Number 11, Ms. Rose, you worked in
20 customer service at the Postal Service; right? So if somebody
21 calls up and says the package is broken, it is, they send a
22 picture in, right, but they might -- you know, they might say
23 that there was a crystal vase inside of the package; right?
24 Just because the package is broken doesn't mean everything is
25 true. Do you agree with that?

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1 **PROSPECTIVE JUROR 11:** At the end of the day --

2 **THE COURT:** You'll need to go to the microphone.

3 Sorry.

4 **MR. SPIRO:** I think she's going to tell me that it's
5 customer service so the vase is broken. I don't know if --

6 **PROSPECTIVE JUROR 11:** Again, we want to be respectful
7 of the customer's request, obviously, and we also want to be
8 mindful of the company as well. So at the end of the day, if
9 there's a way to compromise -- again, it's what they said
10 because they're supporting the company and as long as we're
11 able to accommodate. And if -- by any means, if we can't be
12 there for the repairs, at least we can compensate in another
13 way so that they have some sort of satisfaction.

14 **MR. SPIRO:** And I appreciate that -- that answer. And
15 I totally understand and get your role and the person's going
16 to be upset because, for sure, the package was damaged.

17 **PROSPECTIVE JUROR 11:** Of course.

18 **MR. SPIRO:** As long as I have you up here -- it seems
19 tough to keep having people run up to the microphone. Another
20 question sort of relatedly for everybody -- and not to pick on
21 you, Ms. Rose -- but does anybody feel that they can't -- I
22 think you all know what I'm getting at. You're going to know
23 something wrong happened by an upsetting topic.

24 Do you think you're the kind of person that's going to be
25 just inclined to believe that anything else happened; right?

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1 If, you know, something happened on the playground once, it
2 must mean it's happening every day. Does anybody here think
3 that's going to be an issue for them?

4 Because it's the same question back to you, which is if
5 the person had an issue with their mail carrier, right, and the
6 package was broken and they called up a week later and a week
7 later, I mean, would you assume that they're telling the truth
8 because you saw the picture the first time?

9 **PROSPECTIVE JUROR 11:** Whether it's a client that is,
10 how do you say, like current, like brand-new, or has been with
11 us with the company, at the end of the day, we want to be able
12 to meet their needs. And if it's their say, then we want to
13 accommodate -- or at least I would like accommodate.

14 **MR. SPIRO:** So -- but the question more broadly to the
15 jury is -- the point I'm trying to get at -- and anybody who
16 that has something they might want to share on the topic,
17 please raise your hand. Is that there's going to be
18 allegations here in this case; right -- liability's been found.
19 It's not for you to determine. The question is whether other
20 events happened, right, and are you going to be the type of
21 person that says, "Well, if it happened once, it probably
22 happened every day."

23 Does anybody feel that once they hear that it happened
24 once, that they're going to assume or believe that it almost
25 certainly happened on another day?

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(No response.)

THE COURT: You'll need to step to the microphone, please. And if you'd give your juror number also, please.

PROSPECTIVE JUROR 4: Number 4.

I think if something happened -- let's say something bad happened today, that's not necessarily going to happen again and again and again. It's just one incident.

MR. SPIRO: Correct. And it could -- in all fairness, it could have happened again, but it also could --

PROSPECTIVE JUROR 4: We can't assume that. If I'm sick today, I'm not going to be sick for the rest of my life and worry, oh, I'm going to be sick for the rest of my life. Like that.

MR. SPIRO: Okay. Thank you very much.

Is there anybody that feels differently? Is there anybody who feels if it happened once, I'm just going to assume it happened, or can you each look at each incident and each allegation separately?

And seeing no hands -- when I see no hands, I'm taking you all to be committing to me -- yes, please -- that you can do that.

PROSPECTIVE JUROR 3: So I think --

THE COURT: What's --

PROSPECTIVE JUROR 3: Juror Number 3, please.

THE COURT: Thank you.

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1 **PROSPECTIVE JUROR 3:** Yes, I think your question if an
2 incident has happened, there's -- you don't need to assume
3 that, you know, it always happens or it does happen in the
4 past; right? But usually in the bigger companies where -- that
5 I work, usually there is -- you know, it could have happened;
6 right? I mean that's what I'm saying.

7 **MR. SPIRO:** I agree.

8 **PROSPECTIVE JUROR 3:** There is usually no smoke
9 without fire, if you know what I mean. These things -- in
10 larger organizations especially, right, these things usually --
11 if it happened once you need to look at it and say has it
12 happened before or has it not happened before. There's no need
13 to assume that it has never happened is my point.

14 **MR. SPIRO:** We're saying the same thing. Agreed.
15 Agreed. You have to look at each incident differently and sure
16 you can look and sure you assess the next incident. It doesn't
17 mean you close your mind to the next incident, it just means
18 you evaluate it independently and make your own determination.

19 So --

20 **THE COURT:** Mr. Spiro, will you let Juror Number 11
21 get back to her seat?

22 **MR. SPIRO:** Yeah. You were hiding there. I
23 apologize. Thank you.

24 (Pause in proceedings.)

25 **MR. SPIRO:** One of the ways that you're going to have

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1 to make these determinations is assessing credibility and
2 that's by looking at a witness and looking at them testify and
3 asking yourself are they being -- like what I asked you at the
4 beginning -- are they being complete and transparent with you.

5 Juror Number 3, have you had that experience where you're
6 evaluating the credibility of somebody and -- and you look to
7 certain factors to see if they're telling you the truth or if
8 they're adding things on?

9 **PROSPECTIVE JUROR 3:** Yeah. I think you do need to
10 look at, you know, work managing teams, you know, then you
11 evaluate people that are sort of the same. You know, you do a
12 performance review. People are going to come to you, you need
13 to evaluate and see are they being truthful, are they not. You
14 know, looking at facts and looking at data, I think that's
15 usually the right way to do it.

16 **MR. SPIRO:** Right. What other witnesses say,
17 corroboration, things like that; is that fair?

18 **PROSPECTIVE JUROR 3:** Could you repeat that, please?

19 **MR. SPIRO:** Sure. You want to talk to multiple
20 witnesses, you want to look for corroboration, you want to look
21 at data; right?

22 **PROSPECTIVE JUROR 3:** Yes. If there's an allegation
23 or is there some -- you know, some wrong doing, you have to
24 obviously validate that with facts, you know, asking other
25 people to corroborate it without -- yeah, I would think so.

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1 **MR. SPIRO:** Thanks. And since I have you up --

2 **PROSPECTIVE JUROR 3:** Sure. Go ahead.

3 **MR. SPIRO:** You know, the other thing about this case
4 is you know that -- we've talked about that there's liability,
5 it's an upsetting subject, everything I've talked about. The
6 plaintiff goes first; right? They go first. One of the parts
7 of a trial, even a short trial, you have to keep an open mind.
8 You have to keep an open mind and wait to hear both sides.

9 Does anybody here have an issue with that?

10 (No response.)

11 **MR. SPIRO:** And part of that is cross-examination.
12 Okay? And so lawyers, me, I'm going to have to cross-examine
13 somebody that something bad happened to. I'm telling you that
14 something that should not have happened happened to the person,
15 I'm going to have to cross-examine him.

16 So the question is: Do you agree that both sides should
17 be able to test credibility, that both sides should have that
18 opportunity and that you can keep an open mind while that's all
19 going on? And can everybody give me their commitment as to
20 that, because this one I really need your commitment to? Is
21 there anybody in the jury box on this side that cannot commit
22 to me that they will allow the test of credibility and they
23 will keep an open mind?

24 (No response.)

25 **MR. SPIRO:** I'm looking out into the left side of the

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1 courtroom. Can everybody give me that commitment? And I'm
2 seeing nods. I'm hoping to see universal nods.

3 And on this side of the courtroom --

4 (No response.)

5 **MR. SPIRO:** -- everyone can commit to me that?

6 And my final question -- and Juror Number 3, I'll let
7 you -- because I already got in question with Juror Number--
8 you can have a seat.

9 **PROSPECTIVE JUROR 3:** Okay. Thank you.

10 **MR. SPIRO:** Thank you, sir.

11 Is that -- finally, ultimately what you're here for is to
12 assess damages. And my colleague on the other side said that
13 it's going to be mental suffering, you know, psychological
14 injury; right?

15 And that can be a very complicated thing. Okay? Some
16 people might say to themselves -- and jurors say this all the
17 time in lots of cases -- I don't know what it was like walking
18 in that person's shoes. I can't put myself in that person's
19 shoes. Right? I don't know what it's like to be Mr. Diaz, and
20 I don't know what it's like to be any of you. As a juror,
21 you're required to do that. You're required to be -- put
22 yourself in their mind and be objective and call balls and
23 strikes. Right?

24 So you can't say to use an analogy from a different
25 situation if there was a case where somebody was discriminated

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1 against -- and discrimination is everywhere. We all know this.
2 If someone was discriminated against about their religion, and
3 they saw something, and it upset them; right. Everybody follow
4 the fact pattern so far?

5 Just because you're not of that religion, right, if they
6 came in and said listen, I saw something. I saw a caricature.
7 It upset me, and I want a trillion dollars. Right? If they
8 said that.

9 One possible response is well, I don't know what it's like
10 to walk in their shoes. And it's true; you don't. I don't
11 know, trillion sounds good enough. But as a juror, that's not
12 obviously your responsibility. You've got to call balls and
13 strikes. You've got to follow the law.

14 Does everybody understand that?

15 (No response.)

16 **MR. SPIRO:** Okay. I see some nods.

17 And so what I sort of need is a commitment from you that
18 you don't hide behind that or you don't run away from that
19 or -- you have to understand that if you take the oath as a
20 juror, that's what your responsibility is: To stand and make a
21 decision based on facts and data and numbers and -- and fill
22 out your jury form.

23 Does everybody understand that?

24 (No response.)

25 **MR. SPIRO:** Does anybody think they would have a

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1 problem with that? Can you raise your hand if you think that
2 that would be a problem with you? That you think you would
3 be -- as I started and now I'm about to end -- swept up in it.
4 Something happened, it's upsetting, and you're swept up in it.
5 You say I can't understand a limit on this because it's
6 upsetting and I haven't walked in their shoes.

7 Is there anyone who feels that way?

8 (No response.)

9 **DEFENSE COUNSEL:** Okay. I thank you all for your
10 time.

11 Thank you, Your Honor.

12 **THE COURT:** Thank you.

13 All right, ladies and gentlemen, the questioning of you is
14 now completed, and we -- there are two different things that
15 are going to happen, and the first of them is that I'm going
16 to -- we're going to take a recess of -- until 10 of 2:00, yes?
17 To -- so that the lawyers actually can take a short break, and
18 then we're going to discuss the first round of excusals from
19 the jury.

20 After that happens, everybody will stay in their seats,
21 and the lawyers will make their peremptory challenges. And
22 after that, we will have a jury.

23 So, for now, let's -- I would like you all to come back at
24 10 of. I want you to remember the no communication. Don't
25 talk about anything that's gone on in the courtroom, anything

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1 that's involved with anything. Don't communicate with anybody.

2 And then we will finish up the selection process in the
3 next little bit. All right. Thank you.

4 (Proceedings were heard outside the presence of the jury:)

5 (Recess taken at 1:24 p.m.)

6 (Proceedings resumed at 1:38 p.m.)

7 **THE CLERK:** Please come to order.

8 **THE COURT:** We should close the door in the back.

9 Please be seated, everybody.

10 (Pause in proceedings.)

11 **THE COURT:** All right. We are moving on to the cause
12 and hardship excusals. I'll tell you what I'm inclined to do,
13 and then I'd like to hear it from you if I have missed anybody
14 or you are concerned about anything.

15 I would excuse Juror 18. He owns a share of stock. And
16 then 5. 9 has been excused. 23, 29, 30, 32, 54, and 58. Not
17 that we'll be getting that deep, I think, but...

18 So, Mr. Alexander, I'll start with you when you're ready.

19 (Pause in proceedings.)

20 **MR. ALEXANDER:** Your Honor, with regard to 18.

21 **THE COURT:** You better step up to a mic.

22 **MR. ALEXANDER:** With regard to 18, I think one that
23 share of stock is de minimis. I would be willing to waive it,
24 and I don't think it's significant.

25 It would be -- you know, if one -- I don't know what that

1 share would be. I don't know that that -- I don't know that
2 that affects anything.

3 **THE COURT:** Okay. All right.

4 Mr. Spiro.

5 **MR. SPIRO:** I don't disagree, frankly.

6 **THE COURT:** Okay. I'm happy to leave him in the pool
7 as long as you both waive your rights to object. If he was a
8 federal judge, he would have to recuse himself.

9 **MR. ALEXANDER:** I agree.

10 **THE COURT:** Okay. So 18 is in.

11 **MR. ALEXANDER:** So now we are at the point of
12 addressing cause.

13 **THE COURT:** We are at cause or -- 30 had, among other
14 things, a nonrefundable ticket.

15 **MR. ORGAN:** Your Honor, was 10 on your list?

16 **THE COURT:** Ten's gone.

17 **MR. ORGAN:** Ten's gone. Okay. Just checking. Thank
18 you.

19 **MR. SPIRO:** Your Honor.

20 **THE COURT:** Hang on, Mr. Spiro. Let Mr. Alexander
21 take this on first.

22 So with respect to the ones that I listed, do you have any
23 disagreements with those?

24 **MR. ALEXANDER:** No, Your Honor. Well, I do with some
25 but not with regard to -- not with regard to 23, not with

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1 regard to 30. We are fine with 32. And we are fine with --
2 the only one we're not fine with, I guess, is 5 and 29. So
3 we're fine with 54, fine with 58.

4 **THE COURT:** Okay. And what's your perspective on 5?

5 **MR. ALEXANDER:** My notes said that her feelings about
6 Musk would not impact her, that it would not be an advantage,
7 and when asked by Defendants if she had anybody [sic], she said
8 it depends on what happened to Mr. Diaz.

9 The standard that counsel was using is not the standard.

10 **THE COURT:** I'm aware of the standard.

11 **MR. ALEXANDER:** I'm sure that you are, but I say that
12 because she said she could be fair and impartial. And the
13 thing is, she doesn't lose her life experience. She said she
14 can be fair and impartial and then she hears the evidence and
15 then her life experience can come in and impact the verdict.
16 And nothing that she said contradicts that.

17 **THE COURT:** Mr. Spiro.

18 **MR. SPIRO:** Yes, Your Honor. Your Honor specifically
19 asked her a question. It was actually your questioning; it
20 wasn't the lawyers leading her. When she says she knows about
21 things inside of Tesla, she can not unlearn them.

22 You asked her if she could be fair and impartial. She
23 looked at the Court and said she wishes that she could, she
24 wishes that she could tell you that and she can't. She's an
25 experienced person, and it was clear as day that she can't sit

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1 on this jury.

2 **THE COURT:** Yeah. I'm going to excuse her.

3 Who else, Mr. Alexander? 29, I think, you had mentioned?

4 **MR. ALEXANDER:** No objection to 29.

5 **THE COURT:** Okay. All right.

6 Mr. Spiro, what about you, with respect to the people that
7 I've mentioned?

8 **MR. SPIRO:** We have no issue -- to be frank with the
9 Court, I would not excuse Juror Number 30. I don't think --
10 Amtrak tickets are moveable and she can go this weekend with
11 her son, but I defer to the Court's experience.

12 **THE COURT:** You're heartless.

13 **MR. SPIRO:** What's that?

14 **THE COURT:** You're heartless. That's terrible.

15 **MR. SPIRO:** Just trying to get this case done for
16 Your Honor and the judicial system within one week.

17 **THE COURT:** No. I appreciate your concern there. But
18 I do think -- I do think in light of the circumstances that
19 it -- that she was describing that it makes sense.

20 And do you have any other people, Mr. Spiro, that you want
21 to have considered for cause or hardship?

22 **MR. SPIRO:** Yes, Your Honor. So, I -- I sort of want
23 to just frame for a second just for the Court -- I mean, first
24 of all because it's come up a couple of times, *United States*
25 *vs. Kechedzian* is the Ninth Circuit case -- I'm better on my

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1 other circuits -- but in that case, the Ninth Circuit addressed
2 the issue which is more squarely addressed in the neighboring
3 circuits, but the statements "I'll try; I will try to be fair"
4 were held in that case. You know the case, of course,
5 Your Honor.

6 So we can debate that I think Your Honor used the -- one
7 of the jurors may have volunteered the hundred percent. I used
8 the phrase from the second circuit unequivocal assurance. But
9 regardless, the Court has to be quite convinced that a juror
10 can sit, and we obviously have more than enough jurors that are
11 here that are available.

12 The second thing that's particularly unusual about the
13 situation we find ourselves in is: When is there ever a case
14 where -- and I know Your Honor is aware that I made a motion in
15 front of Judge Chen to remove the case -- a different case
16 regarding Tesla and Mr. Musk from this district. That motion
17 was denied.

18 But at the same time, I can't think of another case, and
19 I've handled many that have had media attention, where an
20 individual and his company are as scrutinized as he is in
21 San Francisco and as poorly thought of.

22 I have never seen, even in murder trials, such strong
23 opinions about an individual.

24 Your Honor said several times -- and I appreciate you
25 saying this and I hope that it stuck -- that he has nothing --

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1 "he" meaning Mr. Musk -- has nothing to do with this case.

2 It's hard for me frankly, intellectually to square a
3 punitive damages case about a corporation from the CEO. I
4 can't do it, and it's a tall order in any judgment to ask a
5 jury to, given some the arguments that you will hear. The fish
6 rots from the head and such.

7 So any statement that is so extreme that a juror has to
8 put of this magnitude about how they feel about the CEO, that
9 juror just shouldn't sit on this case. That's my opinion, I
10 think that's fair, and it's what I would frankly say if I was
11 on the other side.

12 So there are a few jurors that their statements, just
13 to -- just to encapsulate them in one sentence, are so strong,
14 they hate him so much that even if they loved a Tesla, they
15 wouldn't buy it.

16 **THE COURT:** So I've read all the statements. I've
17 heard them testify.

18 Who are the ones that you are talking about?

19 **MR. SPIRO:** 5 you already excluded, so it would be 8,
20 42 -- 8 said that they are not sure. That was the quote. "Not
21 sure."

22 15, 42, and 50 -- and -- just 42.

23 (Pause in proceedings.)

24 **MR. SPIRO:** And 51.

25 So apologies.

1 **THE COURT:** 8, 15, 42, and 51.

2 **MR. SPIRO:** Thank you.

3 (Pause in proceedings.)

4 **THE COURT:** Mr. Alexander, I will hear from you.

5 **MR. ALEXANDER:** Your Honor, at the end of the
6 examination for Juror Number 8, I thought that she had said
7 that she was able to be fair and impartial regardless of the --
8 I think that Mr. Spiro is taking isolated statements and
9 emphasizing those rather than the totality of what she had
10 said.

11 **THE COURT:** I think it's a he, Mr. Schloss.

12 **MR. ALEXANDER:** The HR person. Yes. I thought he was
13 unequivocal in saying yes, he could be fair and impartial.

14 **MR. ORGAN:** Here is what he said.

15 (Pause in proceedings.)

16 **MR. ALEXANDER:** All my notes, everyone's notes say
17 that he could make a determination fairly and impartially.

18 **THE COURT:** I remember him quite well. I'm not going
19 to excuse him for cause.

20 How about 15?

21 **MR. ALEXANDER:** All right, Number 15.

22 (Pause in proceedings.)

23 **MR. ALEXANDER:** So, Your Honor, it was only at the
24 point when Mr. Spiro asked a number of leading questions and
25 unprefaced all of his questions that she conceded as an

1 exception to everything else and said that. So under
2 cross-examination, she said no, Plaintiff does not have --
3 Plaintiff does not have an advantage. I would not come in with
4 a biased view. I think that I could be fair.

5 Those are things that she said several different ways, and
6 so it's only the exceptional one plucked out of those where
7 there is any basis for having cause as to 15.

8 **THE COURT:** Yeah. I -- I'm not going to excuse 15.
9 At the end of the questioning, I think she indicated that the
10 treatment of employees issue was one that was completely
11 unrelated, and she was quite clear that she would be able to
12 serve as a fair and impartial juror.

13 How about 42?

14 **MR. ALEXANDER:** So Juror Number 42 is the -- the
15 algebra teacher and --

16 **THE COURT:** I mean, I don't think we are going to get
17 close to 42, but --

18 **MR. SPIRO:** I withdraw 42.

19 **THE COURT:** Great. Do you withdraw 51 as well, even
20 later?

21 **MR. SPIRO:** I will -- I don't want to withdraw that
22 because I feel strongly about the statement that I made
23 earlier, but we can hold it in abeyance --

24 **THE COURT:** That's fine.

25 **MR. SPIRO:** Thank you, Your Honor.

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1 **THE COURT:** We will hold those two in abeyance. All
2 right.

3 And, Mr. Alexander, did I get all of your suggestions for
4 removing for cause or hardship?

5 **MR. ALEXANDER:** No. I have others.

6 **THE COURT:** Okay.

7 **MR. ALEXANDER:** 23 has been excused; correct -- or we
8 have accepted 23 as being --

9 **THE COURT:** 23 is removed -- will be removed.

10 **MR. ALEXANDER:** So with regard to 27, she wrote that
11 she is against punitive damages and it would impact her
12 decision; that it would diminish the decision after the fact.
13 Her inability to be -- her limitations on awarding punitive
14 damages and that it would impact the number, that prevents her
15 from being fair and impartial. Her response was "Likely yes,
16 it would affect my determination."

17 **THE COURT:** Okay.

18 **MR. ALEXANDER:** She also raised her hand with regard
19 to the questioning about awarding punitive damages.

20 **THE COURT:** Mr. Spiro?

21 **MR. SPIRO:** She was asked several follow-ups by the
22 Court, and she was unequivocal in her assurance that she would
23 follow your legal instructions and that her opinions have
24 nothing do with your legal instructions, and everybody comes to
25 this with opinions.

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1 **THE COURT:** Mr. Alexander, I'm not going -- I'm going
2 to overrule your suggestion. I think she is somebody, if you
3 wanted to use a strike, that would be fine but she was going
4 to -- she is going to judge the case -- and she probably has a
5 different view than other jurors -- but she said she could do
6 it fairly.

7 **MR. SPIRO:** Your Honor, one other thing that the Court
8 asked me regarding waiver of a juror earlier that I gave an
9 indication, but I actually want to correct the record. Given
10 my learned appellate counsel and others' inputs, I can't
11 consent and I won't consent to a juror with a share remaining.
12 I know the Court earlier indicated --

13 **THE COURT:** Okay. Then 18 is out. We will strike 18.
14 Because I do think it is -- it's a legal reason for cause.

15 Mr. Alexander?

16 **MR. ALEXANDER:** Number 32, I believe that Tesla starts
17 with an advantage. This isn't --

18 **THE COURT:** 32 is on my list.

19 **MR. ALEXANDER:** Oh, it is. Okay.

20 **THE COURT:** They are struck.

21 (Pause in proceedings.)

22 **MR. ALEXANDER:** Now, Your Honor, with regard to
23 Question -- Question 5 and Question 4.

24 **THE COURT:** Is it a juror?

25 **MR. ALEXANDER:** I'm sorry.

1 **THE COURT:** What are you asking?

2 **MR. ALEXANDER:** With regard to -- I posed questions
3 with regard to jurors as to whether they could award punitive
4 damages and Juror 37 -- I'm sorry -- 37, 41, 49, and 57 each
5 raised their hands to indicate that they could not award
6 punitive damages.

7 **THE COURT:** So I don't think that was precisely your
8 question, first of all. And second of all, I don't think just
9 a hand raising is sufficient. If you wanted to disqualify them
10 for cause, you would need to have asked them questions
11 directly, and I don't think we are getting to those folks
12 anyway.

13 **MR. ALEXANDER:** Okay.

14 **MR. COLLIER:** Your Honor, I would just like to briefly
15 state for the record that Mr. Spiro decided to withdraw his
16 objection -- I'm sorry -- impose his objection to 18 having the
17 single share only after it was made clear that Juror Number 27
18 would be the fourteenth in the box. And I believe that was a
19 tactical decision, and I think he should be held to waiver for
20 having waived that.

21 **THE COURT:** I think people are strategic all the time,
22 Mr. Collier, particularly in jury selection and I'm -- I think
23 there is a legal reason that -- and I don't think it's -- I
24 would not impose waiver.

25 **MR. COLLIER:** Understood, Your Honor.

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1 **MR. ALEXANDER:** Nothing further, Your Honor.

2 **THE COURT:** Okay. So -- so just that I'm clear, we
3 are back to where we started with what -- with my list. So the
4 jurors that are being -- that we will excuse when they come in
5 will be 18, 5, 9 is gone -- 23, 29, 30, 32, 54, and 58, and
6 then we will pass the paper back and forth, and you can make
7 your strikes and we can have a jury.

8 **MR. SPIRO:** Thank you, Your Honor.

9 **MR. ALEXANDER:** Thank you, Your Honor.

10 **THE COURT:** Let's bring the band in.

11 (Pause in proceedings.)

12 (Proceedings were heard in the presence of the prospective
13 jury panel:)

14 **THE COURT:** All right. Please be seated, everybody.

15 Ladies and gentlemen, since some of you I'm going to
16 excuse in a moment, I just wanted to tell you why it is that
17 everybody stands up when you come into the courtroom, and that
18 is in honor of the service that you are providing, the
19 importance of your duty as citizens to sit on a jury, and
20 that's why -- that's why everybody stands up.

21 And you are entitled, and if you are on the jury, you are
22 entitled to sit down whenever you want to. That's your --
23 that's your business, but we honor you and we thank you for
24 your service.

25 I am -- right now I'm going to relieve some of you from

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1 jury service, and you can leave the courtroom and go about your
2 life with my thanks for doing your duty.

3 And the -- everybody else will stay seated and then the --
4 the lawyers will do a selection process, which involves passing
5 a piece of paper back and forth. So -- so let me now first
6 thank and excuse Juror Number 5, 9, 18, 23, 29, 30, 32, 54, and
7 58.

8 So if I just called your number, you can leave now and
9 thank you very much for your service today.

10 (Excused prospective jurors exited the courtroom.)

11 **THE COURT:** So at this point Ms. Davis is going to
12 give a piece of paper probably to Mr. Alexander, and they are
13 going to proceed to pass the paper back and forth. You can
14 stand where you are. You can read. This will take a little
15 bit of time but probably not a ton of time, and then we'll be
16 ready to go to the next thing.

17 (Pause in proceedings.)

18 (Sidebar held but not reported.)

19 **THE COURT:** All right. Ladies and gentlemen, the
20 parties have now chosen the jury, and I would like Jurors
21 Number 3, 4, 6, 13, 16, 17, 20, and 22 to come to the jury box,
22 if you are not already there.

23 And so let's do that first.

24 (Pause in proceedings.)

25 **THE COURT:** Okay. Second, Juror Number 11, thank you.

JURY VOIR DIRE

1 You are excused.

2 **PROSPECTIVE JUROR 11:** Thank you.

3 **THE COURT:** And so who else do we have?

4 Juror Number 8, you are excused. Thank you.

5 All right. So, ladies and gentlemen, you are our jury in
6 this matter for the week.

7 And, Ms. Davis, why don't we swear the jury and then we
8 can release everybody else.

9 **THE CLERK:** Okay. Jurors, if you will stand, please,
10 and raise your right hand.

11 (Jury panel duly sworn.)

12 **THE CLERK:** Thank you.

13 **PROSPECTIVE JUROR 6:** I don't understand what they
14 say.

15 **THE COURT:** Okay. So, Ms. Davis, if you would give
16 Juror Number 6 the microphone.

17 (Pause in proceedings.)

18 **THE COURT:** Juror Number 6, you were indicating that
19 you didn't understand what was being said?

20 **PROSPECTIVE JUROR 6:** I -- all -- I don't understand.

21 **THE COURT:** So during the course of the morning, have
22 you not understood what was going on?

23 **PROSPECTIVE JUROR 6:** Yeah.

24 **THE COURT:** You have not? And are you having
25 trouble -- you've indicated that you understood me. You

JURY VOIR DIRE

1 understand --

2 **PROSPECTIVE JUROR 6:** I understand you -- I submit the
3 question but the rest of the case I don't understand.

4 **THE COURT:** Okay. Let me see the lawyers over here
5 for a second, and we'll do that part off the record. If we
6 need to do something on the record, then we will figure out
7 what to do.

8 Turn on the white noise machine, please.

9 (Pause in proceedings.)

10 (Sidebar held but not reported.)

11 **THE COURT:** Juror Number 6, I appreciate the fact that
12 you spoke up now. I wish you had spoken up earlier, but you
13 have spoken up now and that's fine. And I -- I'm glad that you
14 did, and I'm going to excuse you from any further jury service.
15 And when you are called next time for jury service, if you are
16 still having trouble understanding, let somebody know as soon
17 as you can. Okay?

18 **PROSPECTIVE JUROR 6:** Okay.

19 **THE COURT:** Okay. Thank you.

20 So I would like to ask Juror Number 28 to come in, please.

21 (Pause in proceedings.)

22 **THE COURT:** And, Juror Number 28, you are now going to
23 be a member of the jury.

24 And, Ms. Davis, if you would administer the oath.

25 (Juror Number 28 duly sworn.)

JURY VOIR DIRE

1 **THE CLERK:** Thank you.

2 **THE COURT:** All right. Does anybody else have
3 anything they want to share before we move on to the next
4 moment?

5 (No response.)

6 **THE COURT:** All right. So, everybody else, all the
7 other jurors who have been here, you have done your duty today
8 as citizens. I appreciate it. The -- this court appreciates
9 it. The parties appreciate it. Thank you. You are now
10 excused.

11 (Excused prospective jurors exit the courtroom.)

12 **THE COURT:** All right. Please be seated, everybody.
13 So, ladies and gentlemen, the first thing that we are going to
14 do is Ms. Davis is going to take you back to the jury room and
15 get you oriented. Meanwhile, the lawyers are going to get
16 reoriented to prepare for their opening statements.

17 What will happen today is I'm going to give you
18 preliminary instructions when you come back, and then the
19 parties will give opening statements and then we will see what
20 time it is. We may have the first witness, and we may not.

21 So if you would follow Ms. Davis. And then we'll be back
22 in 20 minutes. So at 20 of. We will be in recess.

23 (Recess taken at 2:20 p.m.)

24 (Proceedings resumed at 2:44 p.m.)

25 (Proceedings were heard outside the presence of the jury:)

PRELIMINARY JURY INSTRUCTIONS

1 **THE COURT:** Please be seated.

2 **MR. SPIRO:** Just one quick issue, Your Honor. It will
3 only take a second, which is I just want to be clear because
4 there was some commentary during voir dire.

5 Obviously, it's -- the jury is still here to find facts
6 and find facts regarding the incident. They are not supposed
7 to assume that all of the facts are proven that they allege or
8 that they allege in opening.

9 I just was worried about some of the phrasing, that it is
10 going to be presented is that every fact that they opened on
11 has already been established. What's been established has been
12 established according to the instructions and nothing more.

13 **THE COURT:** That's correct.

14 **MR. SPIRO:** Thank you, Your Honor.

15 **THE COURT:** Okay. Let's get the jury.

16 (Proceedings were heard in the presence of the jury:)

17 **PRELIMINARY JURY INSTRUCTIONS**

18 **THE COURT:** All right. Please be seated, everybody.

19 Members of the jury, you are now the jury in this case.
20 It's my duty to instruct you on the law.

21 It's your duty to find the facts from all the evidence in
22 the case. To those facts, you will apply the law as I give it
23 to you.

24 You must follow the law as I give it to you, whether you
25 agree with it or not. And you must not be influenced by any

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1 personal likes or dislikes, opinions, prejudices, or sympathy.

2 That means you must decide the case solely on the evidence
3 before you. You'll recall that you took an oath to do so.

4 At the end of the trial, I'll give you final instructions.
5 It's the final instructions that will govern your duties.

6 Please don't read into these instructions or anything I
7 may say or do that I have an opinion regarding the evidence or
8 what your verdict should be.

9 Plaintiff Owen Diaz was employed by Defendant Tesla, Inc.,
10 doing business as Tesla Motors, Inc., at the Tesla factory in
11 Fremont, California, from June 2015 to March 2016.

12 He brought a lawsuit against Tesla alleging violations of
13 state and federal law. This case is being tried in two phases.
14 We have done the liability phase, and now we're doing the
15 damages phase.

16 It has been conclusively determined that Tesla is liable
17 to Mr. Diaz for creating a hostile work environment based on
18 race in violation of federal law, for failing to prevent racial
19 harassment in violation of federal law, and for negligently
20 retaining and supervising one or more of Mr. Diaz's supervisors
21 in violation of California state law.

22 It has also been determined that as a result of Tesla's
23 liability, Mr. Diaz is entitled to recover from Tesla any past
24 or future non-economic damages and any punitive damages that
25 you may find based on the evidence at trial.

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1 Because of these determinations of Tesla's liability,
2 Mr. Diaz is entitled to recover from Tesla his past and future
3 non-economic damages and punitive damages.

4 In this trial, you must accept each of these
5 determinations as true. It will be your job to determine the
6 amount of the damages award.

7 I will now describe the findings that led to the
8 determination of Tesla's liability in this case. Then I will
9 describe what you should consider in awarding damages. And
10 after that, I will give you instructions on the trial process
11 and how to consider evidence.

12 It has been determined that Mr. Diaz was subjected to a
13 racially hostile work environment while employed by Tesla.

14 That means that Mr. Diaz established, one, that he was
15 subjected to slurs, insults, jokes, or other verbal comments or
16 physical contact or intimidation of a racial nature.

17 Two, the conduct was unwelcome.

18 Three, the conduct was sufficiently severe or pervasive to
19 alter the conditions of his employment and create a racially
20 abusive or hostile work environment.

21 Severe or pervasive means conduct that altered the
22 conditions of employment and created a work environment that is
23 hostile, intimidating, offensive, oppressive, or abusive. A
24 single incident can be sufficiently severe or pervasive to
25 constitute harassment.

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1 Four, Mr. Diaz perceived the working environment to be
2 abusive or hostile.

3 And five, a reasonable African American man in his
4 circumstances would consider the working environment to be
5 abusive or hostile.

6 Whether the environment constituted a racially hostile
7 work environment was determined by looking at the totality of
8 the circumstances, including the frequency of harassing
9 conduct, the severity of the conduct, whether the conduct was
10 physically threatening or humiliating or a mere offensive
11 utterance and whether it unreasonably interfered with an
12 employee's work performance.

13 An employee may be liable when an employee supervisor
14 creates a racially hostile work environment for that employee.
15 A supervisor is someone who is empowered by the employer to
16 take tangible employment actions regarding the employee, such
17 as hiring, firing, failing to promote, reassigning with
18 significantly different responsibilities, or significantly
19 changing benefits.

20 It has been determined that Mr. Diaz was subjected to a
21 racially hostile work environment by Tesla, and that Ramon
22 Martinez or Robert Hurtado, or both were -- was his supervisor
23 and empowered by Tesla to take tangible employment actions
24 against him.

25 It has also been determined that, one, Mr. Diaz was

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1 subjected to a racially hostile work environment by a
2 non-immediate supervisor or co-worker.

3 And two, Tesla or a member of its management knew or
4 should have known of the harassment and failed to take prompt,
5 effective remedial action reasonably calculated to end the
6 harassment.

7 It has been determined that Tesla failed to take all
8 reasonable steps to prevent harassment based on race. It was
9 established, one, that Mr. Diaz was an employee of Tesla or
10 providing services under a contract with Tesla. Two, that
11 Mr. Diaz was subjected to harassment in the course of
12 employment. Three, that Tesla failed to take all reasonable
13 steps to prevent the harassment. Four, that Mr. Diaz was
14 harmed. And five, that Tesla's failure to take all reasonable
15 steps to prevent harassment was a substantial factor in causing
16 Mr. Diaz's harm.

17 It has been established that Mr. Diaz was harmed by Ramon
18 Martinez and that Tesla is responsible for that harm because
19 Tesla negligently supervised or retained Ramon Martinez.

20 Mr. Diaz has shown: One, that Tesla employed Ramon
21 Martinez during the time that Mr. Diaz worked at Tesla;

22 Two, that Ramon Martinez was or became unfit or
23 incompetent to perform the work for which he was employed;

24 Three, that Tesla knew or should have known that Ramon
25 Martinez was or became unfit or incompetent and that this

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1 unfitness or incompetence created a particular risk to others;

2 Four, that after Tesla knew or should have known of Ramon
3 Martinez's unfitness or incompetence, it retained or supervised
4 Ramon Martinez in his position at Tesla's factory;

5 Five, that Ramon Martinez's unfitness or incompetence
6 harmed Owen Diaz;

7 Six, that Tesla's negligence in supervising or retaining
8 Ramon Martinez was a substantial factor in causing Owen Diaz's
9 harm.

10 It has been determined that Tesla is liable to Mr. Diaz
11 for civil rights violations based on contractual relationship.

12 Mr. Diaz has established that he was an employee of Tesla
13 Inc., or that he showed that, one, he gained rights or was a
14 beneficiary under a contract; two, Tesla engaged in racial
15 discrimination or harassment in the enforcement of the contract
16 or Tesla failed to take reasonable steps to prevent harassment
17 from occurring in the workplace; and three, he suffered
18 injuries that he would not have suffered but for Tesla's
19 conduct.

20 Mr. Diaz did not need to have signed the contract nor have
21 been a party to the contract in order to have rights under the
22 contract.

23 He could establish his rights under the contract by
24 showing that he received benefits or privileges under the
25 contractual relationship between Tesla and NextStaff [sic] or

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1 CitiStaff and the contracting parties intended that he receive
2 benefits or privileges that were not incidental or remote.

3 It has been established that Tesla's conduct harmed
4 Mr. Diaz -- that Tesla's conduct that harmed Mr. Diaz was
5 malicious, oppressive, or in reckless disregard of Mr. Diaz's
6 rights.

7 Conduct is malicious if it is accompanied by ill will or
8 spite or if it is for the purpose of injuring the plaintiff.

9 Conduct is in reckless disregard of the plaintiff's rights
10 if under the circumstances it reflects complete indifference to
11 the plaintiff's safety or rights or if the defendant acts in
12 the face of a perceived risk that its actions will violate the
13 plaintiff's rights under federal law.

14 An act or omission is oppressive. If the defendant
15 injures or damages or otherwise violates the rights of the
16 plaintiff with unnecessary harshness or severity such as by
17 misusing or abusing authority or power or by taking advantage
18 of some weakness or disability or misfortune of the plaintiff.

19 Now that I've told you what has been established, I will
20 explain your role in this case.

21 Your role in this case is to determine the amount of
22 damages to which Mr. Diaz is entitled. Mr. Diaz has the burden
23 of proving damages by a preponderance of the evidence.

24 This means that you must be persuaded by the evidence that
25 the claim of damages is more probably true than not true. You

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1 should base your decision on all the evidence regardless of
2 which party presented it.

3 Compensatory damages means the amount of money that will
4 reasonably and fairly compensate Mr. Diaz for any injury you
5 find was caused by Tesla. In determining the measure of these
6 damages, you should consider the nature and extent of the
7 injuries, the loss of enjoyment of life experienced and that
8 with reasonable probability will be experienced in the future,
9 and the mental or emotional pain and suffering experienced and
10 that with reasonable probability will be experienced in the
11 future.

12 It has been established that Mr. Diaz is entitled to
13 compensatory damages. It is for you to determine the amount of
14 damages that have been proved.

15 Your award must be based upon evidence and not upon
16 speculation, guesswork, or conjecture.

17 Mr. Diaz has a duty to use reasonable efforts to mitigate
18 damages. To mitigate means to avoid or reduce damages.

19 Tesla has the burden of proving by a preponderance of the
20 evidence, one, that Mr. Diaz failed to use reasonable efforts
21 to mitigate damages, and two, the amount by which damages would
22 have been mitigated.

23 The purposes of punitive damages are to punish a defendant
24 and to deter similar acts in the future.

25 Punitive damages may not be awarded to compensate a

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1 plaintiff. It has been established that Mr. Diaz is entitled
2 to punitive damages. It is for you to determine the amount.
3 Mr. Diaz has the burden of proving the amount by a
4 preponderance of the evidence.

5 When you consider punitive damages, you may award them for
6 Tesla's conduct that harmed Mr. Diaz, which was malicious,
7 oppressive, or in reckless disregard of his rights.

8 Conduct is malicious if it's accompanied by ill will or
9 spite or if it's for the purpose of injuring Mr. Diaz.

10 Conduct is in reckless disregard of Mr. Diaz's rights if
11 under the circumstances it reflects complete indifference to
12 his safety or rights or if Tesla acted in the face of a
13 perceived risk that its actions will violate the plaintiff's
14 rights under federal law.

15 An act or omission is oppressive if Tesla injures or
16 damages or otherwise violates the rights of Mr. Diaz with
17 unnecessary harshness or severity, such as by misusing or
18 abusing authority or power or by taking advantage of some
19 weakness or disability or misfortune of Mr. Diaz.

20 You must use reason in setting the amount. Punitive
21 damages should be in an amount sufficient to fulfill their
22 purposes of punishment and deterrence but should not reflect
23 bias, prejudice, or sympathy toward any party.

24 In considering the amount of any punitive damages,
25 consider the degree of reprehensibility of Tesla's conduct,

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1 including whether the conduct that harmed Mr. Diaz was
2 particularly reprehensible because it also caused actual harm
3 or posed substantial risk of harm to people who are not parties
4 to this case.

5 You may not, however, set the amount of any punitive
6 damages in order to punish Tesla for harm to anyone other than
7 the plaintiff in this case.

8 All parties are equal before the law, and Tesla is
9 entitled to the same fair and conscioues considerations by you
10 as Mr. Diaz.

11 The evidence you're to consider in deciding what the facts
12 are consists of: The sworn testimony of any witness, the
13 exhibits that are admitted into evidence, any facts to which
14 the lawyers have agreed, and any facts that I may instruct you
15 to accept as proved.

16 In reaching your verdict, you may consider only the
17 testimony and exhibits received into evidence. Certain things
18 are not evidence and you may consider them in deciding what the
19 facts are.

20 I will list them for you. Number 1, arguments and
21 statements by lawyers are not evidence. I will repeat that.
22 Arguments and statements by lawyers are not evidence.

23 The lawyers are not witnesses. What they may say in their
24 opening statements, closing arguments, and at other times, is
25 intended to help you interpret the evidence but it is not

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1 evidence.

2 If the facts as you remember them differ from the way the
3 lawyers have stated them, your memory of them controls.

4 Number 2, questions and objections by lawyers are not
5 evidence. Attorneys have a duty to their clients to object
6 when they believe a question is improper under the rules of
7 evidence. You should not be influenced by the objection or by
8 the Court's ruling on it.

9 Number 3, testimony that's excluded or stricken or that
10 you're instructed to disregard is not evidence and must not be
11 considered.

12 In addition, some evidence may be received only for a
13 limited purpose. When I instruct you to consider certain
14 evidence only for a limited purpose, you must do so, and you
15 may not consider that evidence for any other purpose.

16 Number 4, anything you may see or hear when court was not
17 in session is not evidence. You are to decide the case solely
18 on the evidence received at trial.

19 Some evidence may be admitted only for a limited purpose.
20 When I instruct you that an item of evidence has been admitted
21 only for a limited purpose, you must consider it only for that
22 limited purpose and not for any other purpose.

23 Evidence may be direct or circumstantial. Direct evidence
24 is direct proof of a fact, such as testimony by a witness about
25 what that witness personally saw or heard or did.

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1 Circumstantial evidence is proof of one or more facts from
2 which you could find another fact. By way of example, if you
3 wake up in the morning and see that the sidewalk is wet, you
4 may find from that fact that it rained during the night.

5 However, other evidence, such as a turned on garden hose,
6 may provide a different explanation for the presence of water
7 on the sidewalk.

8 Therefore, before you decide that a fact has been proved
9 by circumstantial evidence, you must consider all the evidence
10 in the light of reason, experience, and common sense.

11 You should consider both kinds of evidence. The law makes
12 no distinction between the weight to be given to either direct
13 or circumstantial evidence. It's for you to decide how much
14 weight to give to any evidence.

15 There are rules of evidence that control what can be
16 received into evidence. When a lawyer asks a question or
17 offers an exhibit into evidence and a lawyer on the other side
18 thinks that it's not permitted by the rules of evidence, that
19 lawyer may object. If I overrule the objection, the question
20 may be answered or the exhibit received.

21 If I sustain the objection, the question cannot be
22 answered, and the exhibit cannot be received.

23 Whenever I sustain an objection to a question, you must
24 ignore the question and must not guess what the answer might
25 have been.

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1 Sometimes I may order that evidence be stricken from the
2 record and that you disregard or ignore that evidence. That
3 means when you're deciding the case, you must not consider the
4 stricken evidence for any purpose.

5 In deciding the facts in this case, you may have to decide
6 which testimony to believe and which testimony not to believe.

7 You may believe everything a witness says or a part of it
8 or none of it.

9 In considering the testimony of any witness, you may take
10 into account the opportunity and ability of the witness to see
11 or hear or know the things testified to; the witness' memory;
12 the witness' manner while testifying; the witness' interest in
13 the outcome of the case, if any; the witness' bias or
14 prejudice, if any; whether other evidence contradicted the
15 witness' testimony; the reasonableness of the witness'
16 testimony in light of all the evidence; and any other factors
17 that bear on believability.

18 Sometimes a witness may say something that is not
19 consistent with something else he or she said. Sometimes
20 different witnesses will give different versions of what
21 happened.

22 People often forget things or make mistakes in what they
23 remember. Also, two people may see the same event but remember
24 it differently.

25 You may consider these differences but do not decide that

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1 testimony is untrue just because it differs from other
2 testimony.

3 However, if you decide that a witness has deliberately
4 testified untruthfully about something important, you may
5 choose not to believe anything that witness said. On the other
6 hand, if you think the witness testified untruthfully about
7 some things but told the truth about others, you may accept the
8 part that you think is true and ignore the rest.

9 The weight of the evidence as to a fact does not
10 necessarily depend on the number of witnesses who testify.
11 What's important is how believable the witnesses were and how
12 much weight you think their testimony deserves.

13 We all have feelings, assumptions, perceptions, fears, and
14 stereotypes about others. Some biases we are aware of, and
15 others we may not be fully aware of, which is why they're
16 called implicit or unconscious biases.

17 No matter how unbiased we think we are, our brains are
18 hardwired to make unconscious decisions. We look at others and
19 filter what they say through our own personal experience and
20 background.

21 Because we all do this, we often see life and evaluate
22 evidence in a way that tends to favor people who are like
23 ourselves or who have had life experiences like our own.

24 We can also have biases about people like ourselves. One
25 common example is the automatic association of male with career

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1 and female with family.

2 Bias can affect our thoughts, how we remember what we see
3 and hear, whom we believe or disbelieve, and how we make
4 important decisions.

5 As jurors, you are being asked to make an important
6 decision in this case. You must: One, take the time you need
7 to reflect carefully and thoughtfully about the evidence.

8 Two, think about why you are making the decision you are
9 making and examine it for bias. Reconsider your first
10 impressions of the people and the evidence in this case. If
11 the people involved in this case were from different
12 backgrounds -- for example, richer or poorer, more or less
13 educated, older or younger, or of a different gender, gender
14 identity, race, religion, or sexual orientation -- would you
15 still view them and the evidence the same way?

16 Three, listen to each other. One must care- -- you must
17 carefully evaluate the evidence and resist and help each other
18 resist any urge to reach a verdict influenced by bias, for or
19 against any party or witness.

20 Each of you have different backgrounds and will be viewing
21 the case in light of your own insights, assumptions, and
22 biases.

23 Listening to different perspectives may help you to better
24 identify the possible effects these hidden biases may have on
25 decision making.

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1 And four, resist jumping to conclusions based on personal
2 likes or dislikes, generalizations, gut feelings, prejudices,
3 sympathies, stereotypes, or unconscious biases.

4 The law demands that you make a fair decision based solely
5 on the evidence, your individual evaluations of that evidence,
6 your reason and common sense, and these instructions.

7 I will now say a few words about your conduct as jurors.
8 As I just said, keep -- first, keep an open mind throughout the
9 trial and do not decide what the verdict should be until you
10 and your fellow jurors have completed your deliberations at the
11 end of the case.

12 Second, because you must decide this case based only on
13 the evidence received in the case and on my instructions as to
14 the law and prior determinations that apply, you must not be
15 exposed to any other information about the case or to the
16 issues it involves during the course of your jury duty.

17 Thus, until the end of the case or unless I tell you
18 otherwise, do not communicate with anyone in any way and do not
19 let anyone else communicate with you in any way about the
20 merits of the case or anything to do with it.

21 This includes discussing the case in person, in writing,
22 by phone, tablet, or computer, or any electronic means, via
23 e-mail, text messaging, or any internet chat room, blog,
24 website, or application, including but not limited to Facebook,
25 YouTube, Twitter, Instagram, LinkedIn, Snapchat, TikTok, or any

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1 other forms of social media.

2 This applies to communicating with your fellow jurors
3 until I give you the case for deliberation, and it applies to
4 communicating with everyone else, including your family
5 members, your employer, the media or press, and the people
6 involved in the trial, although you may notify your family and
7 your employer that you've been seated as a juror in this case
8 and how long you expect the trial to last.

9 But if you're asked or approached in any way about your
10 jury service or anything about this case, you must respond that
11 you've been ordered not to discuss the matter and report the
12 contact to the court.

13 Because you will receive all the evidence and legal
14 instructions you properly may consider to return a verdict, do
15 not read, watch, or listen to any news or media accounts or
16 commentary about the case or anything to do with it.

17 Do not do any research, such as consulting dictionaries,
18 searching the internet, or using other reference materials.
19 And do not make any investigation or in any other way try to
20 learn about the case on your own.

21 Do not visit or view any place discussed in the case, and
22 do not use the internet or any other research source to search
23 for or view any place discussed during the trial.

24 Also, do not do any research about the case, the law, or
25 the people involved, including the parties, the witnesses, or

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1 the lawyers, until you have been excused as jurors.

2 If you happen to read or hear anything touching on this
3 case in the media, turn away and report it to me as soon as
4 possible.

5 These rules protect each party's right to have this case
6 decided only on the evidence that's been presented here in
7 court and the determinations that I've instructed you to
8 follow.

9 Witnesses here in court take an oath to tell the truth,
10 and the accuracy of their testimony is tested through the trial
11 process.

12 If you do any research or investigation outside the
13 courtroom or gain any information through improper
14 communications, then your verdict may be influenced by
15 inaccurate, incomplete, or misleading information that has not
16 been tested by the trial process.

17 Each of the parties is entitled to a fair trial by an
18 impartial jury. And if you decide the case based on
19 information not presented in court, you will have denied the
20 parties a fair trial.

21 Remember, you've taken an oath to follow the rules, and
22 it's very important that you follow the rules.

23 A juror who violates these restrictions jeopardizes the
24 fairness of these proceedings, and a mistrial could result that
25 would require the entire trial process to start over.

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1 If any juror is exposed to any outside information, please
2 notify the court immediately.

3 If there is any news media account or commentary about the
4 case or anything to do with it, you must ignore it. You must
5 not read, watch, or listen to any news media account or
6 commentary about the case or anything to do with it.

7 The case must be decided by you solely and exclusively on
8 the evidence that will be received in the case and on my
9 instructions as to the law that applies.

10 If any juror is exposed to any outside information, please
11 notify me immediately.

12 I urge you to pay close attention to the trial testimony
13 as it's given. During deliberations, you will not have a
14 transcript of the trial testimony.

15 If you wish, you may take notes to help you remember the
16 evidence. If you do take notes, please keep them to yourself
17 until you go to the jury room to decide the case.

18 Don't let note-taking distract you. When you leave for
19 the day, your notes should be left in the jury room. No one
20 will read them.

21 Whether or not you take notes, you should rely on your own
22 memory of the evidence. Notes are only to assist your memory.
23 You should not be overly influenced by your notes or those of
24 other jurors.

25 From time to time during the trial, it may become

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1 necessary for me to talk with the attorneys out of the hearing
2 of the jury, either by having a conference at the bench when
3 the jury is present in the courtroom or by calling a recess.

4 I try to discourage these as much as possible, but if they
5 do happen, in the rare instance that it happens, please
6 understand that while you're waiting, we're working. The
7 purpose of these conferences is not to keep relevant
8 information from you but to decide how certain evidence is to
9 be treated under the rules of evidence and to avoid confusion
10 and error.

11 Of course, we will do what we can to keep the number and
12 length of these conferences to a minimum. I may not always
13 grant an attorney's request for a conference. I usually don't.
14 But don't consider my granting or denying a request for a
15 conference as any indication of my opinion of the case or of
16 what your verdict should be.

17 Trials proceed in the following way: First, each side may
18 make an opening statement. An opening statement is not
19 evidence. It is simply an outline to help you understand what
20 that party expects the evidence will show. A party is not
21 required to make an opening statement.

22 The Plaintiff will then present evidence, and counsel for
23 the Defendant may cross examine. Then the Defendant may
24 present evidence, and counsel for the Plaintiff may cross
25 examine.

OPENING STATEMENT / ALEXANDER

1 After the evidence has been presented, I will again
2 instruct you on the law that applies in the case, and the
3 attorneys will make closing arguments.

4 After that, you will go to the jury room to deliberate on
5 your verdict.

6 So those are the preliminary instructions.

7 Now it's time for the opening statements, and I think
8 after the opening statements are done, we will rest for the day
9 and proceed on Tuesday morning with the first witness.

10 So, Mr. Alexander, please proceed.

11 (Pause in proceedings.)

12 **THE COURT:** Mr. Spiro, if you ever want to see what's
13 on that board, you can walk around.

14 **MR. SPIRO:** It's fine. Thank you.

15 **THE COURT:** When you are ready.

16 **OPENING STATEMENT**

17 **MR. ALEXANDER:** Thank you, Your Honor.

18 Good afternoon. Once again, my name is Bernard Alexander,
19 and along with my colleagues, we represent Owen Diaz.
20 Everything I'm about to tell you is what the evidence will
21 show.

22 This is a hostile work environment case based on race.
23 It's a story of two very different worlds. On the one hand, we
24 have a futuristic company making futuristic cars.

25 On the other hand, you have a plantation mentality

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1 workplace occurring inside the Tesla factory where African
2 American employees are subjected to the N-word on a virtual
3 daily basis, where Owen Diaz was subjected to verbal and
4 physical threats and attacks, and where African American
5 employees in general are treated like second-class citizens
6 here in San Francisco in 2015.

7 The two worlds collide and coexist at the Fremont
8 factory -- at the Tesla Fremont factory.

9 In the first phase of the trial, Tesla claimed that it had
10 a zero --

11 **MR. SPIRO:** Objection to this.

12 **THE COURT:** Sustained. Stick to the -- stick to the
13 instructions, Mr. Alexander.

14 **MR. ALEXANDER:** In the first phase of trial, there
15 was --

16 **MR. SPIRO:** Objection to this.

17 **THE COURT:** So, ladies and gentlemen, the first phase
18 of this case has been determined. And so now we are into the
19 second phase, and the manner in which we are discussing it does
20 not comport exactly with what Mr. Alexander was saying.

21 So if you could rephrase.

22 **MR. ALEXANDER:** I will, Your Honor. Thank you.

23 The Court has given you -- has indicated determinations
24 that Tesla is liable for severe and pervasive conduct. Severe
25 and pervasive conduct with regard to racial harassment so

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1 severe that a determination was made that damages were due not
2 just for compensation -- for compensatory damages but also for
3 punitive damages.

4 Punitive damages. To punish and deter conduct. So that
5 Tesla would not create or maintain a hostile work environment,
6 a work environment that was essentially a plantation mentality.

7 During this trial, the issue will be accountability.

8 (Pause in proceedings.)

9 **MR. ALEXANDER:** During this trial, Tesla will try to
10 avoid accountability for its conduct. But in this trial, we
11 will show you that they must be held accountable, and it will
12 be your job to hold them accountable.

13 With regard to the finding -- with regard to -- excuse me,
14 I've lost a page.

15 With regard to accountability, it will be your job to
16 determine what amount of damages should be awarded, what amount
17 of monetary damages should be awarded to Owen Diaz for both the
18 past harm that he has already suffered and the future harm that
19 he will continue to suffer.

20 But it will also be your responsibility to determine what
21 amount of punitive damages should be awarded against Tesla, a
22 company that was worth billions and billions of dollars during
23 the timeframe that Owen Diaz worked there in 2015.

24 And so it's your responsibility to do two things in this
25 phase of the trial.

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1 One, to determine the amount of emotional stress damages
2 Owen Diaz should be awarded for the harm he has already
3 suffered and will suffer in the future; and two, the amount of
4 punitive damages that is necessary to deter a company the size
5 of Tesla.

6 Now, with regard to this, keep in mind that Tesla is
7 100 percent liable for this conduct. And Owen Diaz is not
8 liable, responsible at all. He did nothing to put himself in
9 this circumstance. So we are here to determine damages under
10 those circumstances.

11 Now I'm going to talk to you about the evidence, the
12 evidence that we are going to present to you so you understand
13 the basis for making your determination as to damages, both the
14 compensatory damages and the punitive damages. And I want to
15 warn you that some of the facts that we are going to discuss
16 will be disturbing.

17 First, let me tell you about Owen Diaz. Owen Diaz is
18 approximately 54 years old right now. He started working at
19 the Tesla factory in approximately June of 2015.

20 He was hired as an elevator operator. Saw an
21 advertisement, applied. Was sent to a staffing company and
22 then ended up as an employee working at Tesla.

23 As an elevator operator, he was operating huge elevators,
24 freight elevators. These elevators were the lifeblood of the
25 company because what would happen is two elevators go up and

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1 down two floors. People would leave equipment, boxes, things
2 that had to go upstairs, and then they would leave things that
3 was waste that had to go downstairs.

4 These were huge industrial elevators, and it was his job
5 to move equipment and what have you up and down, and there were
6 a number of departments that would leave things, drop things by
7 the elevator. And so it was his job to make sure it got done.
8 Oftentimes, these departments would be upset, be yelling. It
9 was very high stress because everybody wanted their stuff moved
10 first.

11 Now, Owen's life was on the elevator. It was like an
12 island that he was on. He didn't go anywhere else inside the
13 factory. He is stuck to the island stuck to the elevators. He
14 went up and down the elevators moving equipment, moving various
15 items, and the only other places that he would go is perhaps to
16 the cafeteria or to the restroom and then to and from work.

17 The elevator was his island, and he didn't know what was
18 going on elsewhere.

19 So let me tell you just a little bit about Owen Diaz.
20 He's got a family. He is been married for over 26 years. He's
21 got an adult son. He's got an adult daughter. He grew up in
22 Oakland, graduated from high school in Oakland, went a couple
23 of years to junior college or community college taking roofing.

24 He is just an ordinary nice guy wanting to take care of
25 his family, and that's why he got this job at Tesla because it

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1 is one of the highest paying jobs he could find in the Oakland
2 area.

3 So I'm going to tell you some of the experiences that Owen
4 Diaz had while he was at Tesla. The first incident I'm going
5 to tell you about is regarding a person by the name of Judy
6 Timbreza.

7 So Owen had been working there -- working at the Fremont
8 factory inside the elevators going up and down, and towards the
9 end of July -- he started in early June. Towards the end of
10 July, Mr. Timbreza starts to come into the elevator on a
11 regular basis, and he would come in with his friends. And they
12 would be talking -- Mr. Timbreza, by the way, is male.

13 They would be talking in Spanish, and they would be
14 saying -- he would say certain things, and then he would look
15 at Owen Diaz and the other people inside the elevator would
16 also laugh while he was laughing while looking at him.

17 This happened a few times, and then Mr. Diaz finally
18 decided that he'd check -- try to figure out what they were
19 saying. So he used Google Search to write in the names, and he
20 found out what they were saying. And it turns out that they
21 were saying "mayate" which is the Spanish word for N. It's the
22 N-word in Spanish. And they were also saying "porch monkey."
23 And that had gone on for several weeks.

24 And so finally, one day after that, there was a
25 confrontation, a confrontation in the elevator and they had to

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1 be separated, Mr. Timbreza and Mr. Diaz. And the supervisor
2 was called over, Tom Kawasaki.

3 And Tom Kawasaki came over, and he did an investigation.
4 He asked what had happened, and Owen Diaz said that
5 Mr. Timbreza was using racial language, racial slurs.

6 And Mr. Kawasaki, his supervisor, spoke to multiple
7 people, and all those people said yes, it was true. He was
8 using racial language.

9 And so if we can show Exhibit Number 38.

10 Mr. Kawasaki -- and these exhibits are the exhibits that
11 you will see later. Mr. Kawasaki reported to his supervisor:
12 "Employee 2, Owen, has brought to my attention of comments
13 being made towards him that are racist in nature."

14 That's what Owen Diaz reported immediately. He reported
15 it verbally, and Mr. Kawasaki put it in writing to his
16 supervisor, Edward Romero, and CC to Victor Quintero.

17 And then Mr. Kawasaki will come and testify that he not
18 only sent Exhibit Number 38, but he actually told those
19 supervisors, he told Ed Romero that it was confirmed that
20 racist -- that racist comments were made.

21 But when the information got up the line to Mr. Romero,
22 the supervisor, a Tesla supervisor, he sanitized and minimized
23 what had occurred.

24 I'm going to show you Exhibit Number 39. Although
25 multiple witnesses had confirmed that racial comments were

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1 made, Mr. Romero, who reported up the line to his supervisor
2 who was a manager, Mr. Quintero, he reported that Owen Diaz,
3 elevator operator, complained that Judy Timbreza had made some
4 racially offensive remarks toward Mr. Owen.

5 "We investigated by speaking to all witnesses present, but
6 they said they did not hear the remarks."

7 And then he goes on to say: "More than one person agreed
8 Mr. Timbreza's tendency to kid around excessively."

9 That "around" instead of "group" is there.

10 "Mr. Owen says this happened before. Mr. Owen still feels
11 he can work with Judy."

12 Before I talk about that, the importance of this document
13 is the sanitizing and the minimizing. You see here that as
14 opposed to telling the truth, the statement is made that the
15 racial conduct was not confirmed.

16 And with regard to Mr. Timbreza, whether than treating
17 this like the racial incident that it should have been treated
18 as, rather than treating it with regard to a zero tolerance
19 policy, it was diluted and sanitized so that it was minimized.
20 And now instead of being a racial incident, it becomes kidding
21 around excessively in the workplace.

22 So as a consequence, rather than a zero tolerance policy
23 what was done was Mr. Timbreza was given a verbal warning, and
24 he continued to work at the factory.

25 You will not see any documentation of confirmation of the

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1 verbal warning. So you will have no evidence to confirm that
2 that verbal warning was actually ever given.

3 And with return to minimizing and sanitizing, you will
4 see, as I go through and discuss the evidence that you are
5 going to hear, that that occurs repeatedly at Tesla inside the
6 workplace.

7 The next incident I'm going to tell you about involves
8 Ramon Martinez. Ramon Martinez was a supervisor at Tesla. In
9 October of -- on October 17, 2017, Owen Diaz was operating the
10 elevator. By that point he had been working -- by that point
11 he had been promoted. His work was so good that within two and
12 a half months he had been promoted, and now he was a lead.

13 Inside the elevator he was training another employee by
14 the name of Rothaj Foster. They were inside the elevator.
15 Owen Diaz was talking to him, was explaining, what have you,
16 and the elevators opened up and Ramon Martinez rushed into the
17 elevator and rushed at him. With his fists out. Yelling at
18 him and screaming racial slurs, the N-word.

19 And Owen was inside the elevator. He backed up, and he
20 said, "Hey, look" -- didn't fight, didn't defend. Just put his
21 hands up and he pointed to the video because there are video
22 cameras everywhere throughout the Tesla workplace, including
23 inside the elevators. And he pointed to the video, and he
24 said, "Look, it's being caught on video camera."

25 And then Ramon Martinez looked and walked out and walked

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1 away.

2 Exhibit Number 235, it is an e-mail that Owen Diaz wrote
3 on October 17, 2015, saying -- and describing the incident.
4 And he says that Owen Diaz was yelling -- I'm sorry -- that
5 Ramon Martinez was yelling at him and that Ramon followed him
6 into the elevator and "I don't feel safe around him now."

7 This is the first time that he says "I do not feel safe."

8 "Please talk to him. I don't need any problems." And he
9 says, "I just want to do my job. You can check the
10 surveillance system to confirm."

11 And so as a consequence of this -- I'm sorry. Before I
12 say that, Mr. Martinez is a supervisor and because he is a
13 supervisor, the company is charged with that conduct. So when
14 Mr. Martinez attacks Owen Diaz, Tesla is attacking Owen Diaz.

15 And so an investigation should be conducted with regard to
16 this incident.

17 (Pause in proceedings.)

18 **MR. ALEXANDER:** And so initially this matter was
19 supposed to be investigated.

20 I want to turn to Exhibit Number 76. At the bottom you
21 will see on October 19, Wayne Jackson -- Wayne Jackson will
22 come and testify before you. Wayne Jackson sends an e-mail to
23 his supervisor, Terri Garrett. He says: "Dealing with the Owen
24 and Ramon issue now. This issue seems to be related to this,
25 and we really are going to have to do some in-depth

1 investigation."

2 As of October 19, there was supposed to be an in-depth
3 investigation. But then you go up one e-mail two days later,
4 October 21, from Terri Garrett to Wayne Jackson: "Confirming
5 via this e-mail that we agree we do not need to do any formal
6 investigation with regard to Ramon, Owen, and Rothaj."

7 And then if you go up further, Wayne Jackson sending an
8 e-mail to his supervisor, and it says: "Yes, I have spoken
9 with all three and will be speaking with Ramon and Owen again
10 on Friday. I had a conversation with Ed" -- that's the Tesla
11 supervisor, Ed Romero -- "at Victor's desk" -- that's Victor
12 Quintero, the Tesla manager -- "and they just want us to
13 verbally counsel each of them with regards to appropriate
14 behavior in the workplace. No written warning needed right
15 now."

16 So with regard to this incident where Owen Diaz is
17 physically attacked with racial words being said inside the
18 elevator, there is no actual investigation that occurs.

19 And, in fact, you will find out that Tesla only
20 investigated Ramon Martinez's comment because Ramon Martinez
21 made a complaint in anticipation of an investigation saying
22 Owen was unprofessional.

23 So Owen complained and said, "Look, there's video."
24 Mr. Martinez realized that then went out, wrote an e-mail, and
25 said "Owen's acting in an unprofessional manner."

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1 They investigated the unprofessional complaint by Ramon
2 Martinez but they did not investigate Owen Diaz's complaint of
3 a racially motivated attack.

4 With regard to the video cameras, you will not see any
5 video footage because Tesla did not preserve it.

6 (Pause in proceedings.)

7 **MR. ALEXANDER:** With regard to the reference to Ramon
8 Martinez has a history of -- have other complaints about him,
9 that was completely ignored. In other words, if a person is
10 being complained about a second time, you would have thought
11 that they would have gone and investigated. They did not.

12 (Pause in proceedings.)

13 **MR. ALEXANDER:** And with regard to the complaint that
14 Ramon Martinez made where he said that Owen is being
15 unprofessional, he sent it one hour before Owen did to preempt
16 what Owen Diaz was going to say.

17 (Pause in proceedings.)

18 **MR. ALEXANDER:** I don't have the exhibit that I want,
19 but I want the exhibit -- there's an exhibit that talks about
20 the verbal warning, it says: "Play nice with each other inside
21 the sandbox."

22 Mr. Jackson was instructed to give no written warning and
23 that's what they said, "play nice inside the sandbox."

24 (Pause in proceedings.)

25 **MR. ALEXANDER:** So with regard to this incident, there

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1 were two verbal warnings given. There was a verbal warning
2 given to Owen Diaz when all that he did was complain about
3 harassment. So you'll find that that made no sense, the person
4 complaining about harassment getting a verbal warning.

5 And the person who complained about Mr. Diaz being
6 unprofessional, that person got a verbal warning, not for what
7 occurred but for not playing nicely in the sandbox, once again,
8 minimizing and sanitizing, because not playing well in the
9 sandbox is not at all the same as being physically attacked and
10 racial slurs being used inside of an elevator.

11 So as a consequence of having that investigation stopped,
12 there was no zero tolerance policy enforced. They avoided an
13 investigation that would have documented discrimination and
14 harassment in the workplace. There was no reporting of
15 specific words that were used. There was no record made with
16 regard to that video being preserved.

17 The absence of documentation allows Tesla to have no
18 record of there being a hostile work environment inside the
19 workplace.

20 And as you will see, because Ramon Martinez was not
21 disciplined, it got worse. The conduct got worse.

22 I indicated that Mr. Diaz worked in the elevators, he
23 worked up and down the elevators, and he would be taking heavy
24 equipment in and going downstairs into different areas. And so
25 one day, he had left the area of the elevators and then he came

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1 back and what he found was a jigaboo, a drawing, a racist
2 drawing that had been left for him.

3 If we can put up Exhibit Number 2.

4 (Pause in proceedings.)

5 **MR. ALEXANDER:** This drawing was left on a bale. At a
6 factory the size of Tesla, they use lots of cardboard, the
7 cardboard gets packed up and bundled, and then it gets placed
8 on a forklift. And you're going to hear testimony from Owen
9 Diaz with regard to how he walked up and found this.

10 And with regard to this jigaboo that was left, it was left
11 so it was purposely facing outward so that Owen Diaz would see
12 it. And you're going to hear that when these operators pick up
13 these items with forks, normally when you would pick it up, you
14 would have to turn the picture towards you, towards the person
15 operating, but someone, Ramon Martinez, went to the trouble to
16 make sure it was turned outward so Owen Diaz would find it.
17 And Owen Diaz, when he found it, could not believe it, his
18 stomach dropped. He was so upset because he recognized this
19 for what it was.

20 So he called -- he called management and they came over.
21 A person by the name of Michael Wheeler. He will come and he
22 will testify before you as to what occurred.

23 They walked -- Michael -- I'm sorry. Michael Wheeler is
24 also African American, and he will tell you that he was
25 offended when he saw it.

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1 And another African American, a manager at the factory,
2 Mr. Jackson, Wayne Jackson, he will tell you he was offended
3 when he saw it, because every African American would be
4 offended by seeing it. And so Mr. Wheeler and another
5 gentleman walked around to try and figure out who had left this
6 there.

7 And they walked around and they found Ramon Martinez and.
8 And initially, he denied it. They walked him over there and he
9 stood around and then finally, finally, finally he admitted,
10 "Yes, I drew it." And the words he said are, "You people can't
11 take a joke."

12 Mr. Martinez will get onto witness stand and he will
13 explain to you why he thought that this was just a joke. He
14 will tell you that this is a cartoon from his childhood and he
15 was only drawing it to -- to have fun.

16 But he'll also confirm -- and if we can put up Exhibit
17 Number 133 -- that Inki, Caveman Inki was what he intended to
18 draw when he drew that jigaboo.

19 He would get on the witness stand and tell you a story
20 that he didn't mean to hurt anyone. He will tell you that he
21 had a conversation with Owen Diaz where he said to Owen Diaz "I
22 apologize. I apologize." And he will tell you he knew that
23 Owen Diaz was about to send out an e-mail, he claimed that Owen
24 Diaz had already prepared it. And Owen Diaz told him because
25 of his apology, "Oh, that's okay, I won't send it." And you

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1 will conclude that that's an absolute lie. And I don't use
2 that word in courtrooms often.

3 Ramon Martinez will tell you that he intended to draw this
4 Caveman Inki and leave it for Owen Diaz, one of the most racist
5 things, a jigaboo that you can do for an African American man.
6 It is not an accident that he left this -- this drawing that
7 had a bone in its hair and large lips for Owen Diaz.

8 With regard to this incident, which seems to me to be a
9 clear instance of racial harassment, there was an investigation
10 to be conducted.

11 By the way, the people that came over, they spoke to Owen
12 Diaz and he appeared to be visibly upset. He confirmed that he
13 was upset.

14 (Pause in proceedings.)

15 **MR. ALEXANDER:** Having gotten this great job at Tesla
16 this futuristic company where he thought -- where he was
17 enjoying it, where he loved to work, to keep having these
18 things happen to him changed his whole outlook towards Tesla.

19 He felt mocked. He felt ridiculed. He felt helpless. I
20 will show you momentarily the note -- the e-mail that he wrote
21 to Tesla.

22 This -- do we have 130 still? This jigaboo, Inki the
23 Caveman, was so bad, so awful so racist that -- it was from the
24 1950s, that it was taken off the air because it was so racist.

25 You'll be surprised to learn that rather than a zero

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1 tolerance policy and Ramon Martinez being terminated, he still
2 works at the company. He was hired -- at that time, he was
3 working for a staffing company at Tesla. He was hired after
4 this incident as a direct employee receiving all the stock and
5 benefits of a direct Tesla employee.

6 If we could show Exhibit Number 33, it is the e-mail that
7 Owen Diaz prepared.

8 (Pause in proceedings.)

9 **MR. ALEXANDER:** Inside that e-mail, Owen Diaz, fourth
10 line down, refers to a cartoon depicting a black face person
11 with a bone in his hair saying "Boo" for jigaboo. It was clear
12 that Mr. Martinez knew what he was doing.

13 And down below, about eight lines from the bottom, Ramon
14 Martinez said he had drew the picture and he was just playing.

15 "As supervisors or leads, we're held to a higher standard
16 because the people we supervise look to us as examples. If a
17 supervisor does this kind of thing in front of employees" --
18 "employees, what kind of example are we setting? A person
19 should be able to come to work and not be harassed and degraded
20 while they're trying to do their job."

21 "This is not the first time Ramon Martinez has been talked
22 to about this behavior and because nothing has been done, it
23 seems that his behavior is getting worse."

24 "As an employee, I'm entitled to a safe and
25 harassment-free workplace and all I ask and hope for" --

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1 "that's all I ask and hope for."

2 The person who was tasked with conducting -- a person was
3 tasked to conduct an investigation associated with this
4 incident, a person associated with the subcontractor that
5 Owen -- that Mr. Ramirez was working for. That subcontractor
6 was doing work for Tesla, so it was an investigation for them.
7 That investigation was supposed to occur, but instead, a
8 conversation occurred with Mr. Jackson.

9 Mr. Jackson e-mailed the picture of the jigaboo to Victor
10 Quintero, the manager that Ed Romero pointed to -- reported to.

11 And Mr. Quintero when he first received and saw that
12 jigaboo claimed not to know what it was. Claimed that he
13 didn't understand that it was racist, and so Mr. Jackson had to
14 explain it to him.

15 Now, Mr. Jackson, along with his supervisor, recommended
16 that he -- Mr. Martinez be terminated, terminated.

17 Mr. Quintero didn't want that. He wanted to give a verbal
18 warning. And Mr. Jackson, who will testify before you, will
19 tell that he had to insist that something more had to be done,
20 and so they decided that instead of -- instead of termination,
21 he would get a three-day suspension without pay and a final
22 warning inside the file.

23 With regard to that final warning that was supposed to be
24 given, you will not see an exhibit. You will not see any
25 confirmation that that final warning was ever given.

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1 And with regard to the determination, the determination as
2 to that discipline occurred two hours, two hours, after it got
3 to Mr. Quintero. But that determination was made before the
4 investigation was conducted. In other words, instead of
5 conducting a good faith thorough investigation to figure out
6 exactly what was done, they skipped that process and decided
7 that it should be a three-day suspension and then that's what
8 occurred.

9 So Tesla made the decision as to this light penalty before
10 a full investigation could be conducted, before a determination
11 could be made by the subcontractor company.

12 And so once again, racist conduct was minimized and
13 sanitized. It was minimized because instead of a zero
14 tolerance policy, he got a three-day suspension and there was
15 no thorough investigation and the fact that Owen Diaz had
16 complained about this person before was completely ignored.
17 That is the evidence that you will see.

18 Now, with regard to a hostile work environment. One
19 incident, one single incident is enough, but here I've given
20 you three incidents and I'm going to talk to you about a couple
21 of others.

22 But what I want you to understand from these incidents is
23 these are not incidents where there is some issue as to
24 verification. We know that they happened.

25 And based on the totality of the circumstances, just based

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1 on these three incidents, you know that it was a hostile work
2 environment for Owen Diaz.

3 He will tell you how this bothered him, how this upset
4 him. It upset him because he worked at night. He worked
5 virtually alone going up and down the elevators. When he was
6 doing this, there were a couple people working elevators, he
7 was alone.

8 And so now because he had had two physical threats, one,
9 the physical threat inside the elevator but then the jigaboo,
10 now he didn't feel safe because he's working around heavy
11 equipment, he's working at night, anyone could show up and do
12 harm to him. He was subjectively afraid.

13 So Owen Diaz has a son, an adult son. And during this
14 timeframe, 2015, 2016, his son Demetric was 19 years old. For
15 about two months, Demetric worked at the Tesla factory that --
16 the Fremont Tesla factory. And he worked in a different area.
17 He worked in the battery area.

18 And so one day, Owen Diaz, the father, decided to go and
19 visit his son for lunch, and he walked over to the battery area
20 and he found his son sitting with his co-workers. But he got
21 there just in time to hear his son's supervisor call his son
22 the N-word.

23 And the thing is, when he got there and he saw that, it
24 was -- it broke him, it was heartbreaking, because he blamed
25 himself because he had allowed his son to come and work in this

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1 workplace.

2 And the thing is a father is supposed to protect his son,
3 and so Owen Diaz thought that he had let his son down.

4 And so there was a fracture in the relationship that Owen
5 Diaz has had to live with. And so he found out for the first
6 time when he went there that use of the N-word, it was not just
7 with him. Wasn't just inside that silo of the elevator. It
8 wasn't just on the island where he was. It was everywhere. It
9 was pervasive throughout the workplace.

10 His son only worked there for two months. You are going
11 to hear Tesla blame Owen Diaz for bringing his son inside the
12 workplace, blame him because his son was subjected to this --
13 the N-word inside the workplace as though it was Owen Diaz's
14 fault that this hostile work environment was created where the
15 N-word was used constantly.

16 But here are the facts as you will get them. First, this
17 was a great-paying job. Tesla is one of the -- one of the
18 biggest paying -- the best paying jobs at that time in the
19 area.

20 And his son was wanted to work there. And Owen Diaz, when
21 he found out that his son was going to be working there,
22 thought, Hey, look, I know that bad stuff is happening on my
23 island on the elevator, but he had no idea it was happening in
24 the battery department, too.

25 And when Owen Diaz reported the Timbreza incident where

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1 the N-word and mayate was used inside the elevator on that
2 occasion, they seemed to have corrected it.

3 Owen Diaz complained. Mr. Timbreza supposedly got a
4 verbal warning, and Owen Diaz never saw him again. So as far
5 as he knew, Owen Diaz thought that Tesla was going to do what
6 they were supposed to do. They were going to protect him from
7 harassment inside the workplace.

8 So with regard to his son, his being there was not his
9 fault except that he believed that it was his fault.

10 (Pause in proceedings.)

11 **MR. ALEXANDER:** So at the point when Owen Diaz -- I'm
12 sorry. At the point when his son started to work inside the
13 workplace, Owen Diaz did not know that Mr. Romero was going to
14 sanitize and minimize reports, such as changing the information
15 with regard to Mr. Timbreza to -- from being a racially
16 involved incident to just kidding around. He didn't know that
17 he was going to be physically attacked three months later
18 inside the elevator.

19 At the point when his son was there, he didn't know that a
20 jigaboo was going to be left for him.

21 How could Owen Diaz know that Tesla was not going to
22 protect him inside the workplace, was not going to protect his
23 son inside the workplace, because with the zero tolerance
24 policy he had every expectation that they would fulfill their
25 legal duty.

OPENING STATEMENT / ALEXANDER

1 Now, it is important for to you understand that the
2 specific acts, the specific acts that I've told you about so
3 far, they didn't occur in isolation. Because the N-word, the
4 word "nigger," or the Spanish word "mayate," was used on a
5 virtually daily basis.

6 And they did nothing about it. And to allow that conduct
7 to occur inside your workplace essentially lets supervisors and
8 rank-and-file employees know that if you can use the N-word,
9 then you can engage in conduct like Mr. Timbreza did in using
10 mayate in front of Owen like Ramon Martinez did and threatening
11 Owen Diaz like Mr. Martinez did in leaving the pickaninny.

12 The evidence will show that the N-word was everywhere
13 throughout the workplace.

14 I am personally offended by that word, and so throughout
15 the trial I will use the N-word out of respect for you, out of
16 respect for me, and out of respect for Owen Diaz.

17 But that is why we are here because Tesla allowed a
18 hostile work environment with regard to African American
19 employees to exist and fester, and they condoned it. Because
20 you will conclude that if you don't correct the conduct, you
21 are condoning it.

22 You will hear testimony from multiple individuals about
23 what occurred.

24 If we could show the banner.

25 Ramon Martinez started to use racial slurs regarding Owen

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1 Diaz in August of 2015.

2 He used the N-word, over the time that Owen Diaz was
3 there, approximately 30 times. And he said, "I hate you
4 N-word. I hate you effing Ns. Ns aren't shit. I wish I could
5 get all of you Ns fired. Go back to Africa." A couple of
6 times "mayate."

7 Ramon Martinez was a supervisor. When he stated those
8 words, Tesla was stating those words.

9 Robert Hurtado, he was a lead. Robert Hurtado needed to
10 use the elevator, and as a lead, that makes him a supervisor.
11 He would come onto the elevator, and say, "N, hurry up, push
12 the button. You Ns are lazy." He would refer to Owen Diaz as
13 "boy."

14 "If you don't like it, your employment can end." He, too,
15 used the N-word approximately 30 times during the timeframe
16 between when he started and approximately August 2015 and when
17 Owen Diaz left in approximately February of 2015.

18 And I say approximately 30 times because it happened so
19 many times that Owen Diaz couldn't count them.

20 With regard to the N-word, Tesla will try and talk about
21 how it wasn't enough that Owen did it verbally. He knew how to
22 do written complaints. "Why didn't you say in writing that the
23 N-word is occurring?" Trying to blame Owen Diaz for their
24 failures.

25 But you will hear testimony from Wayne Jackson. Wayne

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1 Jackson was a manager at the facility, and Wayne Jackson will
2 tell you that he walked around all of the facility, and he
3 heard the N-word constantly.

4 But because they weren't his employees, because they
5 weren't under his supervision, he did not feel that he had the
6 power to do anything about it. It was offensive to him as a
7 black man, but they had not given him the power, the authority
8 to say, "That's not right."

9 You will hear testimony from another supervisor, Michael
10 Wheeler. You can see him on your screen. Michael Wheeler will
11 tell you that the N-word was used with regard to him. He was
12 supervising an employee. That employee, in response to being
13 verbally reprimanded, called him the N-word, and he complained
14 about it.

15 And nothing happened. In fact, to the contrary, that
16 employee who used the N-word to his African American supervisor
17 was later promoted to a lead.

18 Tamotsu Kawasaki, the person who did the initial
19 investigation, he will tell you that he heard the N-word
20 constantly throughout the workplace.

21 Tesla will try and tell you that there is a friendly
22 version of the word. This conduct did not happen in someone's
23 backyard or at a barbecue; it happened at a workplace. And the
24 law says that employers have an obligation to make the
25 workplace free of racial harassment. And the evidence will

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1 show that despite the fact that managers and supervisors knew
2 this conduct was occurring, Tesla didn't make it stop.

3 And it was their factory, and they had the power to do so.

4 You will conclude that Tesla's conduct is not an accident.
5 It is a conscious decision not to protect African American
6 employees inside their workplace.

7 You are going to hear testimony from -- if we can put up
8 the slide -- you are going to hear testimony from Erin Marconi,
9 who is an HR partner. Partner is like director. She will tell
10 you that if any employee inside the Tesla workplace feels
11 uncomfortable with something, then we have to do something
12 about it.

13 And so as a result of someone drawing boobs on the stick
14 figure of the -- of the bathroom door, they stopped everything.
15 500 people had sensitivity training because it was
16 inappropriate to draw breasts on the woman on a door. Some
17 might consider that childish conduct. Certainly inappropriate.

18 But they stopped the workplace so that 500 people could
19 get sensitivity training.

20 But the N-word occurs day after day after day every day,
21 all day long, at night, and not once do they have sensitivity
22 training. Not once do they stop. To the contrary, they
23 sens- -- they sanitize and minimize. And so regardless of the
24 fact that African American employees are working in a workplace
25 where the N-word is just rampant and pervasive, nothing is

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1 done.

2 It was not an accident that African American employees
3 were hearing the N-word, and it is not an accident that Owen
4 Diaz was subjected to this conduct because Tesla condoned it.

5 With regard to video evidence, you will recall -- and I'm
6 just going to go back. Inside the elevator, Owen was attacked
7 inside the elevator by Ramon Martinez. And at the point when
8 he was attacked, there was an investigation that was supposed
9 to be conducted and then they stopped it.

10 And there were two things. One, there was the video and
11 then there was this person Rothaj Foster. You will not hear
12 any statement from Rothaj Foster. No statement was obtained
13 from him. He was not interviewed. He was a third party
14 completely unbiased who could have confirmed that Owen Diaz was
15 yelled at using profanity, using racial slurs and that he
16 backed up.

17 You will not hear testimony from Rothaj Foster.

18 But with regard to that video where Owen Diaz said, "Check
19 the video," the video that you will not see from that incident,
20 it is not the only time.

21 With regard to Michael Wheeler, the African American
22 employee, the Tesla factory is so large that they use golf
23 carts to walk around, to get around. And he was a person that
24 used a golf cart. And one day, one evening he got off of his
25 cart and walked away, and then he came back and sat down, and

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1 he found feces on his cart.

2 He sat in that feces. And, of course, he was offended.
3 And he went, and he spoke to someone and reported it and said,
4 "Check the cameras," because he will tell you there were
5 cameras everywhere inside of Tesla.

6 And they got back to him, and they said there was no
7 footage.

8 With regard to Owen Diaz and you are not seeing the video
9 there, it is consistent with what occurred with Mr. Wheeler,
10 the African American man who said he sat in feces, and they
11 didn't collect the footage.

12 Now, I have given you this information out of order, so we
13 are going to show you the timeline briefly.

14 We are going to show you the timeline of events.

15 Owen -- Owen Diaz was hired June of 2015. June of 2015
16 was his first day. He found racist graffiti. Racist
17 graffiti -- racist graffiti was inside the bathroom. He got
18 there early. He's only been there a brief period of time,
19 doesn't want to make waves, doesn't make a big deal about it.
20 But it will also be confirmed by Mr. Wheeler that it was there.
21 And it was there during the entire timeframe up until when Owen
22 Diaz left.

23 And then you have the Timbreza incident. It happened
24 July 31, 2015. It's the first real incident that happened to
25 Owen Diaz. That's the timeframe when the son was also working

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1 there.

2 And then you have the Romero misrepresentation where he
3 says no racist conduct and it's kidding around. And then you
4 have the Martinez racist slurs inside the elevator.

5 And then you have Hurtado beginning to make the racial
6 slurs.

7 And then you have Owen Diaz where he -- you have Owen Diaz
8 visit his son's workplace and overhears his son being called
9 the N-word. That's in fall of 2015.

10 And then in October -- October 17, 2016, that's when we
11 have the attack of Owen Diaz inside the elevator where he says,
12 "I don't feel safe."

13 And then October 20 is when the Tesla HR stops the
14 investigation and says, "Let's give them both a verbal
15 warning."

16 And then next, we have the jigaboo, the pickaninny that is
17 left for Owen Diaz in January of 2016. And then we have the
18 discipline that's decided almost instantly without an
19 investigation.

20 And then we have the Hurtado racist slurs ongoing. With
21 regard to the Hurtado racist slurs, what occurs is Mr. Hurtado
22 gets into the elevator, and he has been using racial comments
23 with regard to Owen Diaz and harassing him. And finally Owen
24 Diaz says, "Look, only talk to me about work. Don't talk to me
25 about anything else."

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1 So Mr. Hurtado goes over to his supervisor and says, "Owen
2 Diaz is being unprofessional." And then as a consequence of
3 that, Victor Quintero will say, "We need to talk to Owen, and
4 maybe we need to give him a final warning and think about
5 termination."

6 So Owen Diaz, as a result of saying, "Only talk to me
7 about work," is subjected to a written warning and a threat of
8 losing his job. But people use the N-word constantly and
9 nothing happens.

10 I want to just show the --

11 (Pause in proceedings.)

12 **MR. ALEXANDER:** So Tesla will try and -- try and say
13 that Owen Diaz had performance issues, but all of his
14 supervisors will say otherwise. They will also say that Owen
15 Diaz didn't put things in writing. They have a policy -- if we
16 go to 6.4. They have a policy that says that.

17 You can make reports verbally or in writing, and it makes
18 no difference.

19 But if you make a report verbally, it's a trap. Because
20 if you make a verbal report, the company doesn't document it.

21 And if you make a written report, they minimize it and
22 sanitize it as you have seen here.

23 So really, regardless of whether you make a verbal report
24 or you make a written report, the zero tolerance policy is not
25 enforced.

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1 I want to talk to you briefly about Owen Diaz and preview
2 the testimony you are going to receive.

3 Remember, there are two things that you have to do, award
4 damages to Owen Diaz for the harm that he suffered -- and you
5 are going to hear about the harm that he suffered, the
6 sleepless nights, the inability -- the headaches, the anxiety,
7 the wondering what to do. You are going to find out that he
8 left in February of 2016 because his mother passed away.

9 And he spent that time away dealing with his mother and
10 the time came to come back. And when the time came to come
11 back, he could not bring himself to do it. He could not bring
12 himself to go back to this workplace that was filled with the
13 N-word and all these events.

14 And so as a consequence, he left. And then a month later,
15 Tesla terminated him because he left his job.

16 And you're going to find out -- you're going to find out
17 what it was like for him to experience these things inside of
18 his workplace. He had been happy to be inside the workplace
19 and then because of these events, he could not take it anymore.

20 So it wasn't just about the son, it was about everything.
21 His outlook on life changed, changed immeasurably,
22 immeasurably.

23 You will hear testimony from a psychologist, and only the
24 plaintiff will bring a psychologist to tell you what Owen Diaz
25 went through and the consequence of having something happen to

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1 you based on something you can't control, based on the color of
2 your skin.

3 He will tell you that it is life changing. He will
4 confirm that from the point this happened, Owen Diaz, the way
5 he looks at the world is to be mistrustful. Every new job, he
6 will wonder when is it going to happen here? He does not feel
7 safe. And now it's not -- it's not just in the words, it's not
8 just metaphorical, he does not feel safe anymore.

9 You have two jobs. One is to give compensatory damages to
10 Owen Diaz, but the second thing is to give punitive damages to
11 punish and deter.

12 And your job will be to determine how much money does it
13 take to get the attention of a company that is worth -- was
14 worth billions and billions of dollars under circumstances
15 where they made a conscious decision not to maintain a
16 workplace free of discrimination and harassment, but instead
17 decided -- made a decision to maintain and condone a plantation
18 mentality workplace that was not safe for African American
19 employees.

20 Thank you.

21 **THE COURT:** Thank you, Mr. Alexander.

22 Mr. Spiro.

23 **MR. SPIRO:** Thank you, Your Honor.

24 **THE COURT:** Not to steal your thunder or anything, but
25 will you be completed by 5:00 o'clock?

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1 **MR. SPIRO:** I don't know what time it is, but I'll be
2 done in 15 -- 20 minutes.

3 **THE COURT:** Okay. Please go ahead.

4 **OPENING STATEMENT**

5 **MR. SPIRO:** Okay. So what this case is not about is
6 whether we think that everything that happened at the Fremont
7 factory of Tesla was defensible or right. It was not. There's
8 no excuse. I'm not here to defend it. I never defended it.

9 But that's not what this case is about. And this case is
10 also not about harassment generally or the problems of this
11 country or the history of the world and what we all ought to
12 spend more time doing to make it better. That's not what this
13 case is about.

14 What this case is about is Owen Diaz, what his damages
15 are, what he can prove, what he has exaggerated, lied, and what
16 he is owed under our laws.

17 And, you know, Mr. Diaz, through his counsel, has come up
18 and told you that he has been damaged by the use of the N-word.
19 It is the catalyst of their case. Not just upset about it but
20 psychologically harmed, injured, enough injury that's caused an
21 impact in his functioning and actual real damage under our law.
22 That's what he's claiming they want millions and millions and
23 millions of dollars.

24 But there are two things at the outset I don't think they
25 fully told you. And he said it quickly, but I want to make

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1 sure you know the truth, which is that word, the N-word, which
2 is a horrible thing and can be said sometimes joking -- more
3 jokingly and sometimes in a really, really horrible way. Never
4 once in this case, will Owen Diaz produce a single document, an
5 e-mail, anything, telling anyone he was called the N-word at
6 all. Not once. Let alone called it in this horrible way. He
7 will call not one single witness that tells you he was called
8 the N-word. Not one.

9 There is almost no evidence of anything that you just
10 heard other than a lawyer saying that it happened eight years
11 later, eight years later.

12 And second, whatever happened in this case, whatever
13 happened in the Fremont factory, after working there for
14 months, it did not prevent Owen Diaz from taking the step to
15 encourage his son to apply to Tesla.

16 He told his son, "It would be a great experience for you
17 to work at Tesla." I don't think they told you that. His son
18 didn't just end up there. He told him to come work there.

19 And guess what? He also told his daughter to work there.
20 He had his daughter working there also.

21 So let me say that again. They made it sound as if his
22 son just happened to be there and he bumped into him one day.
23 He will tell you under oath he encouraged his son to work
24 there. He told his daughter to work there.

25 And when his son got fired for doing something, his son

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1 reapplied to work there again. So again, that word, that
2 horrible word, was never documented in this case in any way
3 eight years ago, never once in an e-mail, never once will a
4 witness come forward and say he was called it. Not once. This
5 is eight years later.

6 And that action that he took, actions of telling his son,
7 "This is a great place to work" -- that's what he told his son,
8 "this is a great place to work." And his daughter also applied
9 to work at Tesla. Actions.

10 But ultimately at the end of this case, you'll have simple
11 choices to make because I'm not here to defend everything that
12 he heard and everything that he saw. I'm here to show you the
13 evidence, the actual evidence which will allow you to answer
14 the following questions. One, did Owen Diaz exaggerate, lie,
15 about what he heard and what he saw and how it affected him?
16 And if he did, you should question his credibility and you
17 should give him what he deserves.

18 Two, was Owen Diaz while frustrated, upset, hurt by what
19 he experienced, fairly so, not actually psychologically
20 provably damaged so that his damages are whatever he deserves
21 for that?

22 Or three, is Owen Diaz being honest, forthright, and
23 straightforward with you about what happened and did it cause
24 psychological injury that impacted his functioning and real
25 damage under our law? And for that, he should be awarded

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1 damages consistent with what whatever that injury is, whatever
2 is fair. And that is absolutely fine.

3 But here are the facts. Tesla's the defendant here.
4 They're a company. At the time in 2015, they were a relatively
5 young company. And they're here to answer about this specific
6 man and his claims.

7 Tesla's a big place, many countries, hundreds of stores,
8 tons of offices. This factory alone is three times the size of
9 Oracle Park. 5.3 million square feet. There's 10,000 workers
10 there. Some bad, some good. Some tried to harm Tesla, some
11 try to help Tesla. Some harm their fellow worker, some help
12 their fellow worker and everything in between.

13 The setting for this case in all of massive Tesla is one
14 specific elevator in a specific area during a specific shift
15 during a several month period in the Fremont factory about an
16 hour from this courthouse. So you have to picture this,
17 there's thousands of workers there, it's a huge factory working
18 24/7. People from all walks of life, minorities and
19 immigrants, blue collar, hard-working. This was loud physical
20 high-stress work. Everyone had to work together to get this
21 job done.

22 There were material handlers, people making parts, moving
23 the parts, elevator operators, recycling, janitors, everything
24 had to work together to make this work or the job wouldn't get
25 done. If there was a weak link, it messed everything up.

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1 There were tensions, people fought, it was like a small
2 city and not everybody got along. That's what happens
3 sometimes when you put this many people together in a
4 high-stress environment. There were disagreements.

5 But this Fremont factory, it was a majority minority
6 workplace. Minorities, including African Americans, women,
7 they were leads, they were supervisors, they were in charge of
8 the day-to-day operations. African Americans were leading
9 these investigations.

10 The key person investigating everything you just heard
11 about is an African American man. When folks got in arguments
12 and fights, he was the one deciding, he was the one making the
13 choices, and HR staff was in the factory day and night.

14 Owen Diaz began working at Tesla in the summer of 2015
15 some eight years ago. He worked the overnight shift. He
16 operated a heavy machine elevator. That was his castle.

17 And one day he saw a racist drawing. People shouldn't do
18 that. That was wrong. There's no excuse. I'll never make an
19 excuse.

20 But as I told you before, Owen Diaz never really reports
21 basically anything that you heard about in this courtroom from
22 lawyers years later.

23 And the reason I come back to that -- well, it's really
24 questions, not reasons, that you need to ask yourself, which is
25 how come he never reported that? How can you, the jury, count

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1 on something that he says is so important through his lawyer
2 now but never did then? And how was this company supposed to
3 do things about things they didn't know were happening?

4 What Mr. Diaz says now were the actual tangible events
5 that harmed him are the following, and they're very specific.
6 One, a man named Judy Timbreza coming into the elevator for a
7 few weeks with coworkers laughing and heckling him, for lack of
8 a better word, and he was saying Spanish words under his
9 breath. Mr. Diaz resourcefully Googled the words, saw that one
10 of them, at least, was improper confronted, Timbreza. They
11 went eye to eye, toe to toe, folks broke it up, they asked
12 questions. They gave Timbreza a warning for using that
13 language. They removed him from the area, and Mr. Diaz never
14 saw Judy Timbreza again.

15 There was no cover up. There was a report, an
16 investigation, punishment, the conduct stopped, and Mr. Diaz
17 said after that event, and he will tell you under oath, he was
18 satisfied and he thought it was handled well. He will tell you
19 that under oath. He has testified to that under oath.

20 So let's move on to something else. Second, Ramon
21 Martinez. You heard a lot about the incident in the elevator
22 with Ramon Martinez. And one day in the elevator, Mr. Martinez
23 showed up and he was angry with Mr. Diaz. They had issues with
24 one another.

25 Diaz was by his own admission a man without a filter,

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1 confrontational. You will hear he didn't always follow every
2 rule, and Mr. Martinez confronted him. They went eye to eye,
3 toe to toe. Folks broke it up, asked questions, gave them both
4 warnings, and they didn't see each other and had no interaction
5 until 2016.

6 Diaz's own words at the time, not eight years later, at
7 the time, confirms Martinez said nothing racist. His statement
8 is in front of you.

9 The witnesses that were spoken to, they say nothing racist
10 happened. Mr. Diaz was interviewed by Wayne Jackson, the
11 African American program manager, he said nothing racist
12 happened. And you will soon learn this was also not a cover
13 up.

14 But you see, the evidence will show that it was easy years
15 later to say that this was based on race, very easy, and that's
16 nobody's fault but Ramon Martinez because the moment he did
17 this, it's racist and it's offensive and it shouldn't have been
18 drawn and I'm sorry that this happened.

19 So again, when Mr. Martinez showed up and he sees that
20 people are very, very upset about this, and rightfully so, he
21 apologies and he says I'm sorry. I -- I -- I was kidding. I
22 don't know whether he was being mean, he thought it was mean
23 funny. I don't know what was in his mind eight years ago.

24 I know it wasn't right. You heard about it in the jury
25 instructions. You heard about Ramon Martinez. Not here to

1 defend Ramon Martinez.

2 Supervisors right after this met with everybody in the
3 recycling department, all three shifts, to tell them how
4 offensive this was, to tell them that Mr. Martinez was
5 punished, and to tell them that the conduct was unacceptable in
6 the factory. Not a cover up.

7 Again, Mr. Martinez was suspended without pay. He was
8 issued a final written warning. He was removed from that unit
9 and that area. And he never saw Mr. Diaz again. But he wasn't
10 fired.

11 You may very well feel he should have been. Some of you
12 may think the world should give Mr. Martinez a second chance.
13 That's not what this trial's about.

14 This trial is about the harm this had on Owen Diaz. And
15 so after this incident, Mr. Diaz will tell you of the argument
16 he had with Robert Hurtado, he will say it was a fight spurred
17 by racism. There will be zero evidence of that. No written
18 reports, no e-mails, no other witnesses to this alleged racism.

19 In fact, the independent eyewitness at the scene says
20 there was nothing racist about this at all. It was just a
21 fight between two guys in a factory.

22 And so then they will stand up and they'll say, well,
23 there's these other events, other things were racist, other
24 people said other stuff at other times, other bad things. And
25 they will do this to try to get you angry at Tesla.

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1 But as the Court will instruct you, you're not here to
2 award damages for the harm to others. And again, some of what
3 they told you, you're going to find out very soon is completely
4 untrue.

5 Again, I have to remind you what you are here to judge
6 when you hear these things is not whether an individual person
7 did something wrong -- I'm telling you Martinez did -- what you
8 are here to decide is whether Tesla did something to fail to
9 deal with this and how that act caused damage to Diaz.

10 Caused damage to Diaz and not anybody else. So every time
11 they tell you about this unverified, unreported, unnamed,
12 unspecified something, ask yourself: Did Tesla, about that
13 incident, do something wrong? Did it cause damage to Diaz?
14 How should it, the company, be punished?

15 And there is something else that I have to say about this
16 because I heard of this weaponization of images of plantations
17 when I was sitting there.

18 And it's hard to hear. It is hard to hear about a company
19 that has provided jobs and opportunity and cares about its
20 employees. It's hard to hear.

21 And so there is a second thing I need to tell you now
22 about this unnamed, unreported, unverified somethings, and it's
23 the most important thing I'm going to tell you today.

24 Exaggerated lie reports, lies on this subject matter, they
25 harm progress. They destroy justice. So remember that when

1 Owen Diaz testifies. Remember that.

2 Remember that when they talk about justice and what's
3 right. Remember that.

4 And so at the end of this case, you will have relatively
5 simple choices to make because I'm not here to defend
6 everything you heard or saw. I'm here to show you the evidence
7 which will allow you to answer those three questions.

8 One, did Owen Diaz exaggerate or lie about what he heard
9 and how it affected him, in which case you should question his
10 credibility and give him what he deserves.

11 Two, was Owen Diaz, while frustrated upset or hurt by what
12 he experienced, not actually psychologically proveably damaged
13 so that his damages are just what he deserves? Or was Owen
14 Diaz honest, forthright, and straightforward with you and what
15 happened caused psychological injury that impacted his
16 functioning and real actual damages under the law at which
17 point he should absolutely be awarded whatever damages are
18 consistent with that actual specific damage as instructed by
19 the Court.

20 But to do this, you need to get inside the mind of Owen
21 Diaz. And to do that, you are going to need to know a thing or
22 two about Owen Diaz.

23 And he knows a thing or two about this world, and he knows
24 actions speak louder than words. Actions speak louder than
25 words eight years later. He knows he encouraged his kids to

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1 join because this environment was not as bad as he claims here
2 today. Asking for more money than he knows he deserves. He
3 didn't leave after any of these incidents. He worked. He got
4 paid. He got raises. He got promoted. He passed along an
5 African American's friend resume to work at Tesla during this
6 time period.

7 These things I'm talking about, they're never going to
8 change. Those facts, those actions, they're never going to
9 change. One witness will say they were talking closer. He got
10 more loud. This witness should have gotten a longer
11 suspension. That report they did, it should have been better
12 done.

13 You know you will hear these differences in testimony and
14 opinions, and you will hear a lot from lawyers. But his son
15 and daughter being encouraged to apply there, his son working
16 there and reapplying there, his raises and promotions, his
17 passing the resume of an African American man to join him in a
18 job at Tesla, they will never change. These actions will never
19 change.

20 And so as they told you, Owen Diaz leaves work at Tesla.
21 His mother passed away. He e-mails and let everybody know.
22 They send their condolences. He goes and deals with that. It
23 was a very sad time.

24 And it is true, you know, the co-workers, his coworkers at
25 Tesla were having lots of issues with Mr. Diaz, lots of issues

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1 with him, but I'm not going to talk about that right now.
2 Because as Mr. Diaz will tell you, as I agree, you are not
3 going to get over losing your mom. And Mr. Diaz left. He left
4 to attend to his mother's passing. He left the Fremont factory
5 of Tesla.

6 Soon after that, he gets a higher-paying job, a better
7 job. You know, and I'm sorry that things happen there. I'm
8 glad he got a better job. And some people would say that
9 should have been the end of a lot of this.

10 But Owen Diaz will tell you that a year or so after that,
11 he saw one of these lawyers on TV and he brought a lawsuit.

12 Now, the evidence will show the case you are here to
13 decide is very narrow. It is very specific and very difficult
14 for them to prove, and it's their burden to prove it. Was Owen
15 Diaz actually damaged by this in a way he can prove to get
16 millions and millions of dollars? Not hurt, but real actual
17 damage?

18 And so how this works is you look at categories. That's
19 how damages work. Did he lose wages? Did he get a
20 lower-paying job? Did his employment --

21 **MR. ALEXANDER:** Objection. Relevance.

22 **THE COURT:** Overruled. You both have exceeded the
23 bounds of argument and I'm -- I'll allow Mr. Spiro to continue.

24 **MR. SPIRO:** These are things he is not claiming, so
25 I'm not -- did his employment prospects get diminished? Did he

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1 have to pay money out-of-pocket costs? Were there physical
2 damages, like he got punched in the eye? Did he get mental
3 health treatment? Was there documented psychological issues of
4 any kind? No. None. Zero.

5 End of story.

6 But he has to prove psychological impairment, injury. Not
7 hurt, real proveable damage. Harm happens in life, bad things
8 happen every day. Proveable damage is something beyond the
9 harm happening. And to do all of this, like I said, you have
10 to get inside the mind of Owen Diaz.

11 And they have the burden -- they have the burden to prove
12 the thing that you are here to decide, the specific damages
13 that impacted his mind.

14 So three and a half years after that picture was up in the
15 Tesla factory, they sent Mr. Diaz to go meet with a
16 psychologist that they know.

17 And they told you how critical this witness is to their
18 case. You know, many cases it's like who did what when, what
19 was the lighting like. They told you this case is about
20 damages. This is their damages witness. He has to show and
21 prove that there was a psychological injury that impacted his
22 functioning. And the psychologist met with Mr. Diaz, and he'll
23 give you his take.

24 (Pause in proceedings.)

25 **MR. SPIRO:** This is Mr. Diaz's son reapplying to come

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1 back to Tesla, reapplying to multiple jobs to come back to
2 Tesla.

3 And so you saw their presentation. You know, I just want
4 to tell you, though, these names, these are not -- this is not
5 a civil rights -- these are not civil rights social action
6 lawyers.

7 **THE COURT:** All right. That's too far, Mr. Spiro.
8 Why don't you go to what this case is actually about. Finish
9 what the evidence is going to show, and let's not be talking in
10 a pejorative way about people who are in this courtroom.

11 **MR. SPIRO:** This is the chart of the -- of the events.

12 **MR. ORGAN:** That's our exhibit. That wasn't --

13 **MR. SPIRO:** This is the timeline they prevented --
14 they presented. This is their timeline of cover-ups. This is
15 where they say that Owen made verbal complaints, even though
16 Owen knew that it would never work to make a verbal complaint
17 at Tesla.

18 But at the end of it, there was one exhibit of the image.
19 That drawing is real, and it is the canvas upon which they
20 paint the rest of this story.

21 You see, because that drawing happened, they can try to
22 convince you that all these other things happened. And that's
23 what they hope to do, and that's fine.

24 But they didn't show you any exhibits about damages. They
25 didn't show you any exhibits about damages. And neither did I

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1 because there are none which is what this case is all about.

2 And that's it. They will come back up right where they
3 started. They will use rhetoric. They will use emotion. And
4 Mr. Diaz will testify, and you will get to judge his
5 credibility.

6 But all of these questions will remain the same. I ask
7 you to listen to the evidence, find the facts, and you will get
8 this right. Thank you.

9 **THE COURT:** All right. Thank you.

10 So, ladies and gentlemen, this has been a long day and I
11 appreciate your attention to everything that's gone on all day.

12 Tomorrow morning, we will start at 8:30. I hope you will
13 be here by 8:15 because I start getting nervous. The
14 punctuality really matters. In this case I want to get it in
15 for you as I promised. So please be on time.

16 I want to just remind you of a few things. Number one,
17 when I read the preliminary instructions, I always read twice
18 the "What the lawyers say isn't evidence." And I do that
19 because it's not. The evidence is what's going to start
20 tomorrow morning. And it's going to come in through the
21 witnesses, and you are going to make a determination about
22 those things.

23 Another thing that is important to know, both of the fine
24 lawyers who gave their openings used the word "I" a fair
25 amount, about I feel, I this, I that.

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1 That has nothing to do with anything. So it just -- just
2 focus as you promised to do during -- during the selection of
3 the jury on what the people tell you and what you learn from
4 the evidence and the documents.

5 Don't talk about this with anybody. Don't communicate
6 with anybody about the facts. Don't look anything up. Really
7 important that all of those things occur, and we will get this
8 case in. And I appreciate your service, and I'm now going to
9 let Ms. Davis walk you out.

10 (Proceedings were heard outside the presence of the jury:)

11 **THE COURT:** All right. Please be seated, everybody.
12 I am not going to have in this trial any sort of attacks on one
13 side or another. It's not happening on either body -- any
14 counsel's part, and I want to be just as clear as I can be
15 about that.

16 This case is, as Mr. Spiro said at one point, about
17 Mr. Diaz and what happened to Mr. Diaz and Mr. Diaz's damages.
18 That's what it's about.

19 So we will meet at 8:00 o'clock tomorrow morning. I look
20 forward to seeing you then.

21 **MR. SPIRO:** Your Honor, one thing is we don't have a
22 witness order from Plaintiffs.

23 **THE COURT:** Okay. What is the witness order tomorrow?

24 **MR. ORGAN:** We have sent --

25 **THE COURT:** Would you please speak into the microphone

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1 and just tell me what the witness order is, please.

2 **MR. ORGAN:** We did send -- Kawasaki, who was here this
3 afternoon, Your Honor, he is coming back in the morning.
4 Kawasaki, Jackson Wheeler. We've got two videos to play,
5 Demetric Di-Az, Erin Marconi, Ramon Martinez, Ed Romero, Amy
6 Oppenheimer. Did I say Michael Wheeler? I think I did.

7 **THE COURT:** Yes, you did.

8 **MR. SPIRO:** I just want to clarify that that's the
9 order because we have to produce some of these witnesses.

10 **THE COURT:** Right. Is that the order?

11 **MR. ALEXANDER:** That's the current order. And at the
12 end of the day tomorrow, we will confirm if there are going to
13 be changes.

14 **THE COURT:** So the order for tomorrow is Kawasaki,
15 Jackson, Wheeler, and the two videos followed by Mr. Martinez?

16 **MR. ALEXANDER:** Yes.

17 **MR. COLLIER:** We have Wheeler and Jackson in the other
18 order.

19 **THE COURT:** Oh, I'm sorry. Wheeler goes after
20 Kawasaki. And is -- what's your expectation with respect to
21 time?

22 **MR. ORGAN:** So --

23 **THE COURT:** Should Mr. Martinez, for example, be here
24 if Tesla is producing him?

25 **MR. COLLIER:** Our only concern is that Mr. Spiro

1 indicated that he might be changing some of their time
2 estimates. Based on our current time estimates, I don't think
3 we get to Mr. Martinez tomorrow.

4 **THE COURT:** Well, it is necessary that -- that you
5 know because I don't want you running out of time. I would
6 hate to have you rest.

7 **MR. COLLIER:** I think he should be here tomorrow just
8 in case.

9 **MR. SPIRO:** We will have him tomorrow.

10 **MR. ORGAN:** We have Kawasaki, Wheeler, Jackson,
11 Romero.

12 **MR. COLLIER:** Marconi is the next thing after that,
13 then Romero, then Oppenheimer.

14 **MR. SPIRO:** We are getting different orders each time.

15 **THE COURT:** Yeah.

16 **MR. COLLIER:** I apologize. I have the list now of the
17 actual order, so I'm not sure what he is reading off of.

18 **MR. SPIRO:** Want to read it one more time.

19 **MR. COLLIER:** Yes. Kawasaki first, Wheeler, Jackson
20 Marconi video, Romero, Oppenheimer, Demetric Di-Az video, Ramon
21 Martinez, if we get there, which I think is unlikely.

22 **MR. SPIRO:** Then we are not going to get -- and that's
23 where he said there because the order -- I heard the order
24 wrong. Okay. So we are not going to get to him. We will
25 obviously make Mr. Romero available tomorrow.

1 **MR. COLLIER:** I think it's unlikely we will get to
2 him.

3 **MR. ALEXANDER:** But we have the order.

4 **THE COURT:** We have the order. Isn't it nice. All
5 right. It is a long day. Thank you all. I will look forward
6 to seeing you in the morning.

7 **MR. ORGAN:** Your Honor, one last thing. It's a little
8 crowded in here with the lawyers and for us to confer. It's a
9 little difficult to have a Tesla attorney right -- 2 feet from
10 us.

11 **THE COURT:** Well, it is a tight courtroom. I don't
12 know what the solution is that you are looking for, but they
13 are also going to hear you if you're -- you know, if there was
14 2 feet difference, so...

15 **MR. ORGAN:** Okay. Thank you, Your Honor.

16 (Proceedings adjourned at 4:43 p.m.)

17 ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Monday, March 27, 2023

A handwritten signature in blue ink that reads "Marla Knox". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter